REMITTITUR

SUPREME COURT OF THE UNITED STATES.

No. 617 ~~788~~ ~~108~~ 10

EDWARD MATTHEWS, PLAINTIFF IN ERROR,

vs.

NELSON McSTEA.

IN ERROR TO THE COURT OF COMMON PLEAS FOR THE CITY AND COUNTY OF NEW YORK.

FILED DECEMBER 27, 1872.

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1 Court of appeals.

STATE OF NEW YORK, *ss:*

Pleas in the court of appeals held at the capitol in the city of Albany, on the 12th day of November, in the year of our Lord one thousand eight hundred and seventy-two, before the judges of said court.

Witness the Hon. Sanford E. Church, chief judge, presiding.

E. O. PERRIN, *Clerk.*

Remittitur.—Nov. 23, 1872.

NELSON MCSTEA, RESPONDENT,
Ag't
EDWARD MATTHEWS, APPELLANT.

Be it remembered that on the 11th day of May, in the year of our Lord one thousand eight hundred and seventy-one, Edward Matthews, the appellant in this action, came here into the court of appeals, by John Sherwood, his attorney, and filed in the said court a notice of
2 appeal and return from the judgment of the general term of the court of common pleas for the city & county of New York, and Nelson McStea, the respondent in said action, afterwards appeared in said court of appeals, by Martin & Smith, his attorneys; which said notice of appeal and the return thereto filed, as aforesaid, are hereunto annexed.

Whereupon the said court of appeals, after hearing this cause argued by Mr. John Sherwood, of counsel for the appellant, and Mr. Augustus F. Smith, of counsel for the respondent, and after due deliberation had thereon, did order and adjudge that the judgment of the court of common pleas, appealed from in this action, be in all things affirmed. And it was further ordered and adjudged that the respondent recover against the appellant his costs of appeal to this court.

And it is also further ordered that the record aforesaid and the proceedings in this court be remitted to the said court of common pleas, there to be proceeded upon according to law.

3 Therefore it is considered that the said judgment be in all things affirmed, with costs as aforesaid, and stand in full force, strength, and effect.

And hereupon, as well the notice of appeal and return thereto aforesaid, as the judgment of the court of appeals aforesaid, by them given in the premises, are by the said court of appeals remitted into the court of common pleas of the city and county of New York, before the justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said court of common pleas before the justices thereof, &c.

E. O. PERRIN,
Clerk of the Court of Appeals of the State of New York.

COURT OF APPEALS, CLERK'S OFFICE,
Albany, Nov. 23, 1872.

I hereby certify that the preceeding record contains a correct transcript of the proceedings in said action in the court of appeals
4 with the papers originally filed therein attached thereto.

[L. S.] E. O. PERRIN, *Clerk.*

5 N. Y. common pleas.

NELSON MCSTEA
against
EDWARD MATTHEWS, IMPLEADED WITH JAMES S. Brander, jr., and Samuel L. Chambliss.

Please take notice that the defendant, Edward Matthews, hereby appeals to the general term of the court of common pleas for the city and county of New York, from the judgment entered in the above action on the 17th day of December, 1868, in favor of the above-named plaintiff against the defendant, for the sum of fifteen thousand one hundred and eighty-nine dollars and seventy-five cents, and from each and every part thereof.

New York, December 22, 1868.

Yours, respectfully,

JOHN SHERWOOD,
Attorney for Def't Matthews.

To MARTIN & SMITH, Esq's,
Plaintiff's Attorneys, and
CHARLES E. LOEW, Esq.,
Clerk of the City and County of New York.

6 *Summons for a money demand on contract.*

Court of common pleas for the city and county of New York.

NELSON MCSTEA
against
JAMES S. BRANDER, JR., SAMUEL L. CHAMBLISS, and Edward Matthews.

To the defendants above named:

You are hereby summoned and required to answer the complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said complaint on the subscribers, at their office, No. 31 Nassau street, corner of Cedar street, (Bank of Commerce building,) in the city of New York, within 20 days after the service hereof, exclusive of the day of such service; and if you fail to answer the said complaint within the time aforesaid, the plaintiff in this action will take judgment against you for the sum of ten thousand one hundred and ninety-two dollars and one cent, with interest at the rate of five per cent. per annum on $8,050, from April 26, 1862; and on $1,277.76, from October 10, 1862; and on $864.25, from May 5, 1862, besides the costs of this action.

Dated New York, March 3, 1864.

MARTIN & SMITH,
Plaintiff's Attorneys.

7 Court of common pleas for the city and county of New York.

NELSON MCSTEA
ags't
JAMES S. BRANDER, JUNIOR, SAMUEL L. CHAMBLISS, and Edward Matthews.

CITY AND COUNTY OF NEW YORK, *ss:*

The complaint of the above-named plaintiff, by Martin & Smith, his attorneys, against the above-named defendants.

That, at the times herein mentioned, the defendants were copartners in business at New Orleans, in the State of Louisiana, under the firm-name of Brander, Chambliss & Co.

On or about the 23d day of April, 1861, at New Orleans aforesaid, the copartnership firm of Walker, Cheatham & Co., drew their certain bill of exchange in writing, bearing date at New Orleans on that day, and directed the same to said defendants at said New Orleans, and therein and thereby required said defendants to pay, in twelve months after the date thereof, to the order of the firm of McStea, Value & Co., the sum of eight thousand and fifty dollars and six cents, and then and there delivered the same to said firm of McStea, Value & Co., who, afterwards, for value received, endorsed, assigned, transferred, and delivered the same to the plaintiff who now holds and owns the same.

That, afterwards, and before maturity, said defendants duly accepted in writing said bill of exchange.

That said bill of exchange is past due and payable, but no part
8 of the same has been paid, and said defendants are indebted thereon to the plaintiff in the sum of eight thousand and fifty dollars and six cents, with interest from the 26th day of April, 1862.

SECOND CAUSE OF ACTION.—On or about the 26th day of February, 1862, at New Orleans aforesaid, one Mary Harris drew her certain bill of exchange in writing, bearing date at New Orleans on that day, and directed the same to said defendants at said New Orleans, and therein and thereby required said defendants to pay, on the 7th of October then next, to the order of said firm of McStea, Value & Co., the sum of eleven hundred and sixty-nine dollars and seventy-nine cents, and then and there delivered the same to said firm of McStea, Value & Co., who afterwards, and before maturity, for value received, endorsed, assigned, transferred, and delivered the same to the plaintiff, who now holds and owns the same.

That afterwards, and before maturity, said defendants duly accepted in writing said bill of exchange.

That said bill of exchange is past due, and payable, but no part of the same has been paid, and said defendants are indebted thereon to the plaintiff in the sum of eleven hundred and sixty-nine dollars and seventy-nine cents, with interest from the tenth day of October, 1862.

THIRD CAUSE OF ACTION.—On or about the 26 day of February, 1862, at New Orleans aforesaid, said Mary Harris drew her certain other bill of exchange in writing, bearing date at New Orleans on that day, and directed the same to said defendants at New Orleans, and therein and thereby required said defendants to pay, on the 7th of October then next, to the order of said firm of McStea, Value & Co., the further sum of one hundred and seven dollars and ninety-seven cents, and then and there delivered the same to said firm of McStea, Value & Co., who afterwards, for value received, endorsed, assigned, transferred, and delivered the same to the plaintiff, who now holds and owns the same.

That afterwards, and before maturity, said defendants duly
9 accepted in writing said bill of exchange.

The said bill of exchange is past due, and payable, but no part of the same has been paid, and said defendants are indebted thereon to the plaintiff in the sum of one hundred and seven dollars and ninety-seven cents, with interest thereon from the 10th day of October, 1862.

FOURTH CAUSE OF ACTION.—That on or about the 2d day of January, one thousand eight hundred and sixty-two, the defendants, under their said firm-name, made their certain promissory note in writing, dated New Orleans, January 2d, 1862, whereby they promised to pay, four

months after the date thereof, to the order of the firm of McStea, Value & Co., the sum of eight hundred and sixty-four dollars and twenty-five cents, for value received, and that the said defendants thereupon duly delivered the said note to the said firm of McStea, Value & Co., who afterwards, for value received, endorsed, assigned, transferred, and delivered the same to the plaintiff, and that the plaintiff is now the lawful owner and holder thereof.

That the said note is past due, and payable, and that the same has not nor has any part thereof been paid.

That, by reason of the premises hereinbefore stated, the defendants are justly indebted unto the plaintiff upon the said note in the said sum of eight hundred and sixty-four dollars and twenty-five cents, with interest thereon from the 5th day of May, 1862.

That, by the civil code of said State of Louisiana, in force and effect at the several times hereinbefore stated, the legal rate of interest in cases where no agreement is made between the parties in respect to interest is five per cent. per annum, as by said civil code, or an authorized printed copy thereof, will more fully and at large appear.

That, by reason of the premises, said defendants are indebted to
10 the plaintiff in the sum of ten thousand one hundred and ninety-two dollars and one cent, with interest at the rate of five per cent. per annum on $8,050 from April 26, 1862; and on $1,277.76 from October 10, 1862; and on $864.26 from May 5, 1862; for which sum of $10,192.01, and interest as aforesaid, the plaintiff demands judgment against said defendants, besides the costs of this action.

MARTIN & SMITH,
Pl'ff's Att'ys.

CITY AND COUNTY OF NEW YORK, *ss:*

Isaac P. Martin, of said city, being duly sworn, says: That he is one of the attorneys for the plaintiff in this action; that the foregoing complaint is true to deponent's own knowledge, except as to the matters therein stated upon information and belief, and as to those matters he believes it to be true; that deponent's knowledge and the grounds of his belief of the matters in said complaint alleged, are derived from the in'truments for the payment of money, to wit, the bills of exchange and promissory note mentioned in the complaint upon which this action is founded, and which are now in deponent's possession as such attorney, and from information furnished to deponent by the plaintiff, who is now absent from the city, county, and State of New York, which is the reason the verification of the foregoing complaint is not made by him personally.

ISAAC P. MARTIN.

Sworn to before me this 3d day of March, 1864.

RICHARD STACKPOOLE,
Notary Public.

11 Court of common pleas for the city and county of New York.

NELSON MCSTEA
against
EDWARD MATTHEWS, IMPLEADED WITH JAMES S. BRANDER, J'R, and SAMUEL L. CHAMBLISS.

The answer of the defendant, Edward Matthews, shows to the court: This defendant, answering the complaint of the plaintiff, says that he

denies that, at the time or times mentioned in the complaint, the defendants were copartners in business.

This defendant, further answering, says that, at New Orleans, in or about the 27th day of March, 1861, an arrangement was proposed and made between the defendants herein, whereby it was agreed that a copartnership should be formed at New Orleans, by and between themselves and James S. Brander, senior, for the transaction of business at New Orleans, provided the assent of said James S. Brander, senior, could be obtained thereto, but in case of his refusal, that the said agreement should be null and void; and this defendant says that the assent thereto of said James S. Brander, senior, never was obtained, but, on the contrary, he refused to become a copartner in said proposed copartnership firm of Brander, Chambliss & Co., and that same proposed copartnership was never formed.

That, on or about the 15th day of April, 1861, upon the State
12 of Louisiana seceding from the United States, and war ensuing, that said State, including the city of New Orleans, was occupied and held by the enemy, and so remained until on or about the 30th day of March, 1862, and that the plaintiff herein, who is and was, and deponent is informed and believes, a resident of New Orleans, as well as the parties described in the complaint, as the makers and endorsers of the said note, except this defendant, then were, as he is informed and believes, residents of the State of Louisiana, and were, during the period aforesaid, enemies of the United States.

And the defendant, further answering, says, upon his information and belief, that the draft or bill of exchange first set forth in the complaint, was accepted solely for the accommodation of Walker, Cheatham & Co., without any consideration whatever, and was by them transferred as collateral security for a precedent debt due by said Walker, Cheatham & Co., to McStea, Value & Co., of which firm the plantiff was a copartner, and that no value was parted with therefor by said Walker, Cheatham & Co.; all of which matters were, as this deponent is informed and believes, at the time of said acceptance and transfer, well known to the said McStea, Value & Co., and to the plaintiff herein.

This defendant denies that he has any knowledge or information sufficient to form a belief as to any of the matters set forth in the complaint which are not hereinbefore specifically answered or denied, and he demands that the complaint be dismissed with costs.

JOHN SHERWOOD,
Att'y for Defendant, Edward Matthews.

CITY AND COUNTY OF NEW YORK, *ss:*

Edward Matthews, of said city, being duly sworn, says that he has
read the foregoing answer, and knows the contents thereof; that the same is true, of his own knowledge, except as to the matters there-
13 in stated on information and belief, and as to these matters that he believes it to be true.

EDWARD MATTHEWS.

Sworn to before me this 23d day of May, 1864.
HENRY E. HOWLAND,
Notary Public, New York City.

At a special term of the court of common pleas, held for the city and county of New York, the 15th day of December, A. D. 1868.

Present, Hon. Ch. P. Daly, presiding justice.

NELSON MCSTEA
ag'st
EDWARD MATTHEWS, &C.

A motion having been made before this court for judgment on the verdict in this action, rendered on the eleventh day of March, 1867, for the sum of ($12,603.91,) twelve thousand six hundred and three dollars and ninety-one cents.

Now, on hearing Aug. F. Smith for the plaintiff, and John W. Sherwood, esq., for the defendant, Matthews, and on motion of Martin & Smith, attorneys for the plaintiff, it is ordered that the plaintiff have judgment on said verdict for the amount thereof, with interest thereon from the said date when said verdict was rendered, with costs.

14 This judgment is now made with the expectation that the questions presented will be taken to the general term, when they can receive the fullest consideration.

(A copy :)

NATH'L JARVIS, J'R, *Clerk.*

Judgment.

Court of common pleas for the city and county of New York.

NELSON MCSTEA
ag'st
JAMES S. BRANDER, J'r, SAMUEL L. CHAMBLISS, Edward Matthews.

NEW YORK, *December* 17, 1868.

The issue in this action having been brought on for trial before the Honorable Charles P. Daly, and a jury, at a trial term of this court, held on the first Monday of March, 1867, and the issues having been tried and a verdict for the plaintiff having been duly rendered, on the 11th day of March, 1867, for the sum of twelve thousand six hundred and three dollars and ninety-one cents, and plaintiff's costs having been adjusted at twenty-five hundred and eighty-five dollars and eighty-four cents, now, on motion of Martin & Smith, plaintiff's attorneys—

It is adjudged that the above-named plaintiff, Nelson McStea, recover of the above-named defendants, James S. Brander, j'r, Samuel L. Chambliss, and Edward Matthews, the sum of twelve thousand six hundred and three dollars and ninety-one cents, found by the jury,

15 with twenty-five hundred and eighty-five dollars and eighty-four cents, costs and disbursements, amounting in the aggregate to the sum of fifteen thousand one hundred and eighty-nine dollars and seventy-five cents.

NATHANIEL JARVIS, J'R, *Clerk.*

N. Y. common pleas.

NELSON MCSTEA
ag'st
EDWARD MATTHEWS, IMPLEADED WITH JAMES S. Brander, j'r, and Samuel L. Chambliss.

This action was commenced on the 3d day of March, 1864, against the defendant Edward Matthews, of the city of New York, who alone was served with summons.

The cause came on to be tried before his honor Chief Justice Daly and a jury, on the 8th day of March, 1867.

The following testimony, taken by commission, was then read in evidence, plaintiffs's counsel reading the direct interrogatories and the answers thereto, and the papers in said answers mentioned or referred to, and defendants' counsel reading the cross-interrogatories and the answers thereto, and the papers therein referred to.

16 Interrogatories to be propounded to Nelson McStea and Glendy Burke, witnesses to be produced, sworn, and examined on the part of the plaintiff, in an action now pending in the court of common pleas for the city and county of New York, wherein Nelson McStea is plaintiff, and James S. Brander, junior, Samuel L. Chambliss, and Edward Matthews are defendants, before Miles Taylor, esquire, counsellor at law, of the city of New Orleans, in the State of Louisiana, and Charles A. Peabody, esquire, counsellor at law, of the same place, duly appointed commissioners for that purpose.

Interrogatories to Glendy Burke.

First direct interrogatory. Do you know the parties to this action, or either and which of them? If yea, state how long you have known them respectively. Do you know the firm of McStea, Value & Co.? If yea, how long have you known said firm? Do you know the firm of Walker, Cheatham & Co.? If yea, how long have you known said firm? Do you know Mary Harris and P. T. Harris, her husband? If yea, how long have you known them respectively?

Second direct interrogatory. During the year 1861, were you acquainted with a firm in the city of New Orleans, called and known by the firm-name of "Brander, Chambliss & Co?" If yea, when did you first become acquainted with said firm? Did said firm have a place of business in said city? If yea, state where. Give the street and number.

Third direct interrogatory. Did you know of the formation of
17 said firm at the time or before it was formed? If yea, state all you know in reference to its formation.

Fourth direct interrogatory. Were you connected with said firm in any, if yea, in what capacity; and state when such connection commenced, and how long it continued.

Fifth direct interrogatory. Do you know what individuals composed said firm of Brander, Chambliss & Co.? If yea, state their names, and state your means of knowledge in the premises.

Sixth direct interrogatory. Have you any knowledge, and if yea, what, in respect to the defendant Edward Matthews acting as a member of said firm, or in respect to his attending to the business of said firm? If yea, state fully and particularly all you know on that subject.

Seventh direct interrogatory. Have you received or seen any letters relating to the affairs of said firm of Brander, Chambliss & Co. from said defendant Matthews, or from any other of said defendants? If yea, annex hereto such of said letters as you conveniently can, or true copies thereof, if you are not able to annex the originals; and if you cannot furnish copies of said letters, please state their contents as fully and particularly as you can.

Eighth direct interrogatory. Are you or not acquainted with the handwriting of said firm of Brander, Chambliss & Co.? Are you or not acquainted with the handwriting of each member of said firm? If yea, look at the bill of exchange drawn by Walker, Cheatham & Co., dated

April 23d, 1861, hereto annexed, marked No. 1, and state in
18 whose handwriting is the acceptance written across the face thereof in the words and figures following, to wit, "Brander, Chambliss & Co." Are you or not acquainted with the handwriting of the firm of Walker, Cheatham & Co., the drawers of said bill of exchange? If yea, look at the same and state whether the signature thereto, "Walker, Cheatham & Co.," is or is not in the handwriting of said firm. Are you or not acquainted with the handwriting of said firm of McStea, Value & Co.? If yea, look at the endorsement, "McStea, Value & Co.," on said bill of exchange, and state whether it is or is not in the handwriting of said firm. Do you know, and if yea, state what was the consideration, if any, for the acceptance by defendants of said bill of exchange? Do you know, and if yea, state what consideration, if any, was given or parted with by the firm of McStea, Value & Co. for said bill of exchange accepted as aforesaid?

Ninth direct interrogatory. Did you at any time, and if yea, during what period, have and hold a power of attorney from said firm of Brander, Chambliss & Co.? If yea, annex said power of attorney hereto. If you are not able to annex the original power of attorney, please annex a true copy thereof, or state the contents thereof fully and particularly.

Tenth direct interrogatory. Look at the bill of exchange drawn by Mary Harris, dated February 26th, 1862, for $1,169.79 hereto annexed, marked "No. 2, and state in whose handwriting is the acceptance written across the face thereof in the words and figures following, to wit, "p. p. Brander, Chambliss & Co., G. Burke," and state when, and under or in pursuance of what authority, that acceptance was so made.

19 Look also at the endorsement on said last-mentioned bill of exchange in the following words, to wit, "McStea, Value & Co.," and state in whose handwriting the same is.

Eleventh direct interrogatory. Do you know whether or not P. T. Harris, whose name is subscribed to said last-mentioned bill of exchange, had or held a power of attorney from said Mary Harris? If yea, during what period did he hold it; where is the original power of attorney—have you seen or read it? If you can procure the same, please annex it hereto. If you are unable to annex the original, please annex a true copy thereof, or state its contents fully and particularly.

Twelfth direct interrogatory. Are you acquainted with the handwriting of said P. T. Harris and Mary Harris? If yea, state in whose handwriting is the signature to said last-mentioned bill of exchange in the words and figures following, to wit, "M. Harris, by P. T. Harris," and state if you know when, and under and in pursuance of what authority, the name of said M. Harris was so signed to said bill.

Thirteenth direct interrogatory. Look at the bill of exchange drawn by said M. Harris, dated February 26th, 1862, for $107.97, hereto annexed, marked "No. 3," and state in whose handwriting is the acceptance written across the face thereof, in the words and figures fol-
20 lowing, to wit, "p. p. Brander, Chambliss & Co., G. Burke," and state when, and under or in pursuance of what authority, that acceptance was made. Look also at the endorsement on said last-mentioned bill of exchange, in the following words, to wit, "McStea, Value & Co.," and state in whose handwriting the same is. Look also at the signature to said last-mentioned bill of exchange, and state if you know in whose handwriting the same is, and state if you know when, and under or in pursuance of what authority, that signature was made.

Fourteenth direct interrogatory. Look at the promissory note signed "Brander, Chambliss & Co.," dated January 2d, 1862, hereto annexed, marked "No. 4," and state in whose handwriting is the signature thereto in the words and figures following, to wit, "p. p., Brander, Chambliss & Co., G. Burke," and state when said signature was written, under or in pursuance of what authority; state also, if you know, in whose handwriting is the written portion of the body of said promissory note. State if you know in whose handwriting is the endorsement on said promissory note, in the words and figures following, to wit, "McStea, Value & Co."

Fifteenth direct interrogatory. Do you know any other matter or thing which would be of benefit or advantage to the plaintiff? If yea, please state the same as fully and particularly as if thereunto specially interrogated.

21 *Interrogatories to Nelson McStea.*

Sixteenth direct interrogatory. Look at the bill of exchange for $8,050.06, signed "Walker, Cheatham & Co.," hereto annexed, marked "No. 1," and state whether or not any consideration was paid or parted with by the said firm of *firm of* McStea, Value & Co., for said bill; and if yea, state what said consideration consisted of, fully and particularly.

Seventeenth direct interrogatory. Do you know any other matter or thing which would be of benefit or advantage to the plaintiff? If yea, state the same as fully and particularly as if thereunto specially interrogated.

MARTIN & SMITH,
Plff's Att'ys.

No. 1.

$8,050.06.] NEW ORLEANS, *April* 23, 1861.

Twelve months after date pay to the order of McStea, Value & Co., eight thousand and fifty dollars and six cents, value received, and charge same to account of—

WALKER, CHEATHAM & CO.

To Messrs. BRANDER, CHAMBLISS & Co.,
New Orleans, La.

[Written on the face:] (No. 35. Due April 26, '62.)
BRANDER, CHAMBLISS & CO.

(Endorsed:) 2901. Brander, Chambliss & Co. $8,050.06. April 23. McStea, Value & Co.

22 No. 2.

$1,169.79.] NEW ORLEANS, *Feb. 26th*, 1862.

On the 7th October next pay to the order of McStea, Value & Co., eleven hundred and sixty-nine dollars and seventy-nine cents, value received, and charge same to account of—

M. HARRIS.
By P. T. HARRIS.

To Messrs. BRANDER, CHAMBLISS & Co.,
New Orleans, La.

[Written on the face:] (No. 123. Due 10th Oct., '62.)
P. p. BRANDER, CHAMBLISS & CO.
G. BURKE.

(Endorsed:) McStea, Value & Co.

No. 3.

$107.97.] NEW ORLEANS, *Feb.* 26, 1862.

On the 7th of October next pay to the order of McStea, Value & Co., one hundred and seven $\frac{97}{100}$ dollars, value received, and charge same to account of—

M. HARRIS.
By P. T. HARRIS.

To Messrs. BRANDER, CHAMBLISS & Co.,
New Orleans, La.

(Endorsed:) McStea, Value & Co.

[Written on the face:] (No. 134. Due October 10, 1862.)
P. p. BRANDER, CHAMBLISS & CO.
G. BURKE.

23

No. 4.

$64.25.] NEW ORLEANS, *Jan.* 2, 1862.

Four months after date we promise to pay to the order of McStea, Value & Co., eight hundred and sixty-four $\frac{25}{100}$ dollars.

Pp. BRANDER, CHAMBLISS & CO.
G. BURKE.

Value received.

No. 123. Due 25th May.

[Endorsed:] MCSTEA, VALUE & CO.

Cross-interrogatories to be proposed to Nelson McStea and Glendy Burke, witnesses produced under the commission aforesaid in the case of Nelson McStea against James S. Brander, jr., Samuel L. Chambliss, and Edward Matthews.

Cross-interrogatories to Glendy Burke.

First cross-interrogatory. State fully and particularly the origin and history of the bills of exchange referred to by you on your direct examination, and each of them, giving dates with accuracy.

Second cross-interrogatory. State whether said bills, or either and which of them, were accepted as renewals of other's bills or business paper, in whole or in part; and if so, give the dates, amounts and names of the parties to such other bills or business paper.

Third cross-interrogatory. State fully the original consideration of each and every bill referred to by you on the direct examination.

24 Fourth cross-interrogatory. If in answer to the direct interrogatories you say that you know of the formation of the firm of Brander, Chambliss & Co., state what are your means of knowledge.

Fifth cross-interrogatory. If you say that you know of any articles of copartnership of said firm, state whether you have seen the same, and where the original or originals now are. Annex the same if in your possession or under your control; or if you cannot annex the original, annex true copies thereof, and state why you do not annex the originals?

Sixth cross-interrogatory. If you have annexed any copies of letter, or other documents, in answer to the direct interrogatories, state whether you have annexed full and perfect copies of each and all parts thereof.

Seventh cross-interrogatory to the witnesses McStea and Burke. State if you know or have any information of a notice of the dissolution of the firm of Brander, Chambliss & Co., in or about October 21st, 1861, or of the publication in a New Orleans newspaper, about that time, of a notice of dissolution of said firm. If yea, state when and in what paper the same was published. Annex said notice or a copy thereof. If you cannot, state what were the contents of said notice, and why you cannot annex it.

Eighth cross-interrogatory to the witnesses McStea and Burke. State whether anything, and if anything what, was set forth in said notice about the cause or occasion of such dissolution. Was anything, and if so what, set forth as to the said firm being dissolved under or by
25 reason of the laws of the Confederate States, or that Mr. Edward Matthews ceased to be a member of the firm of Brander, Chambliss & Co., by or under the confederate laws.

Ninth cross-interrogatory to the witnesses McStea and Burke. If you say that you reside in New Orleans or elsewhere in Louisiana, state how long have you resided in said State and city.

Tenth cross-interrogatory to the witnesses McStea and Burke. State how long you have been in the State of Louisiana and in the city of New Orleans, since March, 1861. If you have been absent from Louisiana or New Orleans since that time, state how long, and at what time or times you were absent. Give the dates particularly.

Eleventh cross-interrogatory to the witnesses McStea and Burke. What was the political condition of the city of New Orleans and State of Louisiana from March, 1861, to May, 1862? Had not the State of Louisiana, by a declaration of a convention of the people prior to April 20th, 1861, seceded from the United States?

Twelfth cross-interrogatory to the witnesses McStea and Burke. Was the authority of the Government of the United States recognized by the authorities or officials of the city of New Orleans, or of the State of Louisiana, from or after the 20th day of April, 1861, down to the 20th day of April, 1862?

Thirteenth cross-interrogatory to the witnesses McStea and Burke. Was not the confederate government, so far as you know, exclu-
26 sively acknowledged and recognized by the authorities and officials of the city of New Orleans and State of Louisiana, from August 1, 1861, to April 20, 1862? State any exceptions that you know of.

Fourteenth cross-interrogatory to the witnesses McStea and Barke. Give the date of the restoration of the authority of the United States Government over the city of New Orleans.

Fifteenth cross-interrogatory to the witnesses McStea and Burke. Were you, during the period from July, 1861, to April, 1862, in any manner, and if so, how, in the employment of or in any way connected with the confederate government, or with the government of the State of Louisiana or the city of New Orleans? Did you, during the period

aforesaid, hold or perform the duties of any office under said confederate government, or under the government of the State of Louisiana or city of New Orleans, and if so, what and when?

Sixteenth cross-interrogatory to the witnesses McStea and Burke. Were the United States mail communications maintained at the city of New Orleans during the period last mentioned, viz, from July, 1861, to April, 1862. If so, in what manner and under what authority?

Seventeenth cross-interrogatory to the witnesses McStea and Burke. Was or was not the port and city of New Orleans, during the period aforesaid, under blockade by the naval force of the United States?

Eighteenth cross-interrogatory to the witnesses McStea and
27 Burke. Was or was not the State of Louisiana, as one of the Confederate States, during the period aforesaid, at war with the Government of the United States?

Nineteenth cross-interrogatory to the witnesses McStea and Burke. Were or were not the several drawers, drawees, and endorsers of the bills in question, during the period aforesaid, adherents of the cause of the southern confederacy? State as to each and every one of them particularly.

Twentieth cross-interrogatory to the witnesses McStea and Burke. State, if you know, where the said several drawers and drawees and endorsers of said bills, and each of them, was or were reported to be at the date of the maturity of the bills.

Twenty-first cross-interrogatory to the witnesses McStea and Burke. Where were the bills aforesaid, and each of them, transferred and delivered to the plaintiff herein and to the firm of McStea, Value & Co.?

JOHN SHERWOOD,
Attorney for Def't Edward Matthews.

28 Depositions of witnesses produced, sworn, and examined the day of , in the year one thousand eight hundred and sixty-five, at New Orleans, in the State of Louisiana, under and by virtue of a commission issued out of the supreme court of the State of New York, in a certain cause therein depending and at issue between Nelson McStea, plaintiff, and James S. Brander, jr., Samuel L. Chambliss, and Edward Matthews *are* defendants:

NELSON MCSTEA, of the city of New Orleans, age forty years and upwards, being duly sworn, publicly, pursuant to the directions hereto annexed, and examined on the part of the plaintiff, doth depose and say as follows, viz:

Sixteenth. To the 16th interrogatory he saith: I have looked at the bill of exchange, No. 1, for $8,050.06, signed Walker, Cheatham & Co. A consideration was paid for that bill of exchange by the firm of McStea, Value & Co., and that consideration was a note of J. H. Walker and M. V. Cheatham, which was past due, and the said bill of exchange was received by McStea, Value & Co. instead of cash, in payment of the said note.

Seventeenth. To the 17th interrogatory he saith: I know nothing further.

Cross-examined:

Seventh. To the 7th cross-interrogatory he saith: I was told by Mr. Glendy Burke, about the 20th of January, 1865, that a notice of dissolution of the firm of Brander, Chambliss & Co., was published or inserted in the Picayune newspaper of the city of New Orleans. I
29 have no recollection of ever having seen or heard of any such

notice, except from Mr. Glendy Burke, except as above stated. I have not, and never had or saw the said notice, or a copy of it; and I do not know the contents of it, further than that Mr. Burke stated, at that time, that it was a notice of the dissolution of the firm, or of the retirement of Mr. Matthews, I do not remember which.

Eighth. To the 8th cross-interrogatory he saith: I know nothing further than I have stated above in relation to the contents of the said notice, and I never heard anything more on the subject of the contents of the notice, or of there having been any reason for the dissolution set forth in it.

Ninth. To the 9th cross-interrogatory he saith: I have resided in the city of New Orleans, State of Louisiana, over twenty-one years.

Tenth. To the 10th cross interrogatory he saith: Since March, 1861, I have been absent from the city of New Orleans twice. In the summer of 1861 I was absent about three months; I think from sometime in July to sometime in October. I cannot state the precise dates. During that time I was on the Houma's plantation of Mr. Burnside, on the Mississippi River, about 75 miles above New Orleans. In the spring of 1863 I left New Orleans for New York, on the 29th of May, and returned to New Orleans on the 23d day of November. During my absence I was in the State of New York and in Connecticut all the time.

Eleventh. To the 11th cross interrogatory he saith: Louisiana,
30 by a declaration of a convention of the people, seceded from the United States in the latter part of the month of January, 1861. The political condition of New Orleans, and of the State, was altered in no other particular, as far as I know.

Twelfth. To the 12th cross-interrogatory he saith: I believe not.

Thirteenth. To the 13th cross-interrogatory he saith: I believe it was.

Fourteenth. To the 14th cross-interrogatory he saith: I believe it was about the 1st of May, 1862.

Fifteenth. To the 15th cross-interrogatory he saith: I was not. I did not. I have never held or performed the duties of any office, civil or military, under the State, city, or confederate government, or been in the employment of, or in any way connected with, the government, or that of the city of New Orleans, or of the State.

Sixteenth. To the 16th cross interrogatory he saith: I think they were not.

Seventeenth. To the 17th cross-interrogatory he saith: I think it was.

Eighteenth. To the 18th cross-interrogatory he saith: I believe it was.

Nineteenth. To the 19th cross-interrogatory he saith: I do not know whether the drawers or drawees and endorsers of the bills in question, or either of them, were, during the period aforesaid, adherents of the southern confederacy or not.

Twentieth. To the 20th cross-interrogatory he saith: I do not
31 know where they, or either of them, were at the date of the maturity of the bills, or where reported to be.

Twenty-first. To the 21st cross-interrogatory he saith: No. 1 was transferred and delivered to McStea, Value & Co., on or about the 23d of April, 1861; Nos. 2 and 3 were transferred and delivered to McStea, Value & Co., on or about the 26th of February, 1862; and No. 4 was transferred and delivered to McStea, Value & Co., on or about the 2d day of January, 1862; and they were all transferred to the plaintiff on or about the 18th day of February, 1864.

NELSON McSTEA.

Fifteenth. To the 15th interrogatory he saith: I desire to say that P. T. Harris for a number of years transacted business, in the name of Mary Harris with the house of Brander & Hubbard, and with that of Brander, Chambliss & Co.; that he made shipments of produce, drew drafts upon the proceeds, which were paid, and ordered supplies, all in her name.

I wish further to say that a notice of the dissolution of the firm of Brander, Chambliss & Co., was published once in the Picayune newspaper of New Orleans, on the 21st of October, 1861.

36 It was inserted in that paper once, and once only. The notice was made by the members of the firm in New Orleans to prevent the sequestration of the interest of Edward Matthews, in the firm, by the confederate authorities then in power, he, Matthews, being then a resident of the city of New York. No change was made in the business of the firm, or in the books thereof, in consequence of the publication of said notice; nor did any change take place in the business, or in the firm, until the 1st of July, 1862, when it was dissolved by the limitation in the articles of copartnership.

Cross-examined:

First. To the 1st cross-interrogatory he saith: The bill of exchange, No. 1, for $8,050.06, was made and accepted under the personal supervision of Mathews, the defendant; the signature of the firm of Brander, Chambliss & Co. being in his handwriting. The bill of exchange, No. 2, for $1,169.79, was drawn by Mary Harris, and given in settlement of the draft on Brander & Hubbard, then past due. The bill of exchange, No. 3, for $107.97, was given for goods sold her by McStea, Value & Co., as I understood at the time, but did not know personally. The promissory note, No. 4, for $864.25, was given by Brander, Chambliss & Co. to McStea, Value & Co., in payment of goods bought by Brander, Chambliss & Co. from them, about the date of it. This is about all I know of the origin and history of the obligations spoken of.

Second. To the 2d cross-interrogatory he saith: I am not able to state.

Third. To the 3d cross-interrogatory he saith: The consideration for No. 4 I have already stated as fully as I can. The consideration for

37 Nos. 1, 2, and 3, was the commission of two and a half per cent. on the amount of each received by Brander, Chambliss & Co., for their acceptances from the respective drawers.

Fourth. To the 4th cross-interrogatory he saith: My means of knowledge were from personal intercourse with the members of the firm during its existence, and from having read the articles of copartnership.

Fifth. To the 5th cross-interrogatory he saith: I have seen the articles of copartnership, the original of which is on file among the records of the office of Theodore Guyol, a notary public of New Orleans, and is dated on the 27th of March, 1861, a true copy of which is hereto annexed, marked 1, Exhibit B. The original I cannot annex, because it is not in my possession or under my control.

Sixth. To the 6th cross-interrogatory he saith: The copies of letters which I have annexed to my answer to the direct interrogatories herein are full and perfect copies of each and all parts of the letters of which they purport to be copies. The copy of the document, Exhibit A, is also a full and perfect copy of the original.

Seventh. To the 7th cross-interrogatory he saith: I know that a notice of the dissolution of the firm of Brander, Chambliss & Co., was published in the New Orleans Picayune once, on or about the 21st day

of October, 1861. I cannot annex said notice, or a copy of the same, for I have not possession of the original, or of a copy, nor have I the means of obtaining either.

Eighth. To the 8th cross-interrogatory he saith: I have no recollection that anything was set forth in said notice about the cause or
38 occasion of the said dissolution. If anything was set forth I do not recollect the fact, or what it was.

Ninth. To the 9th cross-interrogatory he saith: I have resided in New Orleans since the year 1826.

Tenth. To the 10th cross-interrogatory he saith: I have been in the city of New Orleans all the time since March, 1861, with the exception of the months of July, August, and September, of the year 1864, during which time I was absent on a visit to New York, and Eastern States.

Eleventh. To the 11th cross-interrogatory he saith: The State of Louisiana, prior to April 20, 1861, had seceded from the United States. That was the only change in the political condition of the city of New Orleans, and of the State of Louisiana, which I have any knowledge of, from March, 1861, to May, 1862.

Twelfth. To the 12th cross-interrogatory he saith: I was not.

Thirteenth. To the 13th cross-interrogatory he saith: It was; I know of no exceptions.

Fourteenth. To the 14th cross-interrogatory he saith: I was, in the latter part of April, or the beginning of May, 1862.

Fifteenth. To the 15th cross-interrogatory he saith: I was not connected with any of them in any way or manner, military or civil, nor did I hold or perform the duties of any office under any of the governments enquired of during that time, or at any time until the month of April, 1865.

39 Sixteenth. To the 16th cross-interrogatory he saith: There were no United States mail communications maintained during that period.

Seventeenth. To the 17th cross-interrogatory he saith: It was.

Eighteenth. To the 18th cross-interrogatory he saith: It was.

Nineteenth. To the 19th cross-interrogatory he saith: I do not know as to either of them.

Twentieth. To the 20th cross-interrogatory he saith: I do not know.

Twenty-first. To the 21st cross-interrogatory he saith: At or about the time they bear date, respectively.

G. BURKE.

Examination taken, reduced to writing, and by the witnesses subscribed and sworn to, this thirteenth day of April, 1865, before us.

MILES TAYLOR,
CH. A. PEABODY,
Commissioners.

40 EXHIBIT "A."

BRANDER, CHAMBLISS & Co., *to* GLENDY BURKE. } 26th of April, 1861.

Procuration.

STATE OF LOUISIANA, *City of New Orleans:*

By this instrument of procuration be it known that, on this twenty-sixth day of April, in the year of our Lord one thousand eight hundred

and sixty-one, before me, Theodore Guyol, a notary public in and for the city and parish of New Orleans, and State of Louisiana, duly commissioned and sworn, and in presence of the witnesses hereafter named and undersigned, personally came and appeared Edward Matthews, of this city, herein acting for and representing his commercial firm of Brander, Chambliss & Co., of this city, which is composed of himself, and of Samuel C. Chambliss and James S. Brander, jun'r, as active partners, and of James S. Brander, senior, as partner in commendam, who declared that his said firm had made and appointed, and by these presents make, nominate, ordain, authorize, constitute and appoint, and in place and stead depute and put Glendy Burke, also residing in this city, to be their true and lawful attorney in fact, general and special, giving by these presents granting unto said attorney full power and authority for them, the said firm, and in their name and behalf, and to their use and behalf, *and* to use, conduct, manage, and transact all and singular their affairs, business, and concerns in this city and State, of whatso-
41 ever nature and kind, without exception or reservation whatsoever; to open all letters of correspondence addressed to them, and to answer the same; to make and endorse promissory notes in their name, and draw, endorse, and accept bills of exchange; to make checks and draw money out of any bank wherein the same may have been deposited in the name or for account of the said firm; to deposit drafts, bills of exchange, acceptances and promissory notes or other obligations, for collection, in any bank, and withdraw the same or the amount thereof at pleasure, by check or otherwise; to sell and transfer all or any shares of the capital stock of any bank or other corporate body, owned by the said firm, and receipt for the dividends due or to become due thereon, to pledge or pawn all or any shares of the capital stock of any bank or other corporate body owned by the said firm, and to make and give any note or notes which may be necessary from time to time for the renewal of the same; to attend *to* all or any meeting' of creditors wherein the said firm may be interested, and vote in their name on all questions and cases that may be submitted; to attend all or any meetings of the stockholders of any bank or other corporate body wherein the said firm may be interested, and vote in their name on all questions and cases that shall or may be submitted; to borrow money from any bank or other monied institution on the notes or obligations of the said firm, or those of others which shall or may come into the said attorney's hands for their use, and make other notes or obligations from time to time for the renewal of all such or any part or parts thereof; to sell, transfer, and convey, or to mortgage and affect all or any part or parts of the real, personal, or mixed estate of the said firm, and to lease, let, or hire all or any of their houses, property, and slaves, and receive and receipt for the rent and wages thereof, as the same shall fall due; and for the full execution of the purposes aforesaid, to make, sign, and execute in the name of the said firm, all acts, whether of sale, mortgage, lease, release, contract, covenant, com-
42 promise, deed, agreement, or otherwise, that shall or may be requisite and necessary, and bind the said firm thereby as firmly as if the same were, or had been, their own proper acts and deeds; to sign all bonds, or other acts required by the revenue department at the custom-house of this district or elsewhere, and do all custom-house business whatsoever; to receive and attend to all shipments or consignments of produce, wares, or merchandise that shall or may be made to them, either for their own account and risk, or that of others, and to pursue the instructions of owners, shippers, or others interested therein relative thereto; to receive and acknowledge notices of protest of all or any

bills, drafts, or promissory notes to which the said firm may be party, and to act for the said firm and be their substitute in all cases wherever they may be appointed the agent or attorney of others; and to ask, demand, have, take, and by all lawful means to recover and receive of and from all and every person and persons whomsoever, body or bodies corporate, all and every such sum or sums of money, goods, debts, property, and effects whatsoever, as now is or are or may hereafter be in his, her, or their custody or possession, due, owing, coming or belonging to them, the said firm, whether by bond, bill, note, book-debt, account, consignment, bequest, or for and by what other reason and means soever; and to that end, with whom it may concern, to adjust and settle all accounts, and upon recovery and receipt in the premises, to make and give good and sufficient discharges and acquittances; to appear before all courts of law and equity, there to do and prosecute and defend as occasion shall require, or to compromise, compound, and agree in the premises, by arbitration or otherwise, as the said attorney shall, in his discretion, think fit; and generally to do and perform all and every other act, matter, and thing whatever as shall or may be requisite and necessary, touching and covering the affairs, business, and concerns of the said firm, as fully, amply, and effectually, and to all intents and purposes with
43 the same validity as if all and every such act, matter, or thing were or had been herein particularly stated, expressed, and especially provided for, as they, the said firm, could or might do if personally present; also with full power of substitution and revocation, the said firm hereby agreeing to ratify and confirm all and whatsoever the said attorney shall lawfully do or cause to be done by virtue of this act of procuration.

Thus done and passed at New Orleans, the day and year aforesaid, in the presence of William G. Latham and Prosper Camus, witnesses hereto required, and residing in that city, who have signed these presents with the said appearer and me, notary, after reading of the act. Fourteen words erased, null.

EDWARD MATHEWS.
THO'S GUYOL,
Notary Public.

W. G. LATHAM.
P. CAMUS.

(G. Burke, written across the face.)

The foregoing is a true copy of an act of procuration extant in the registers of Thos. Guyol, late notary public, which are in my possession and custody as his seccessor in office.

New Orleans, January 1st, 1865.

JOHN McCULLOCH,
Notary Public,
Successor of Tho's Guyol, late Notary Public.

At the execution of a commission for the examination of witnesses between Nelson McStea, pl'ff, and James S. S. Brander, jun., Sam'l L. Chambliss, and Edward Mathews, defendants, this paper in
44 writing was produced and shown to Glendy Burke, and by him deposed unto at the time of the examination before

MILES TAYLOR,
CH. A. PEABODY,
Commissioners.

EXHIBIT B.

No. 174. 27th March, 1861. Copartnership of Brander, Chambliss & Co. B. S. 4 f., 490.

Be it known this twenty-seventh day of March, in the year of our Lord one thousand eight hundred and sixty-one, before me, Theodore Guyol, a notary public duly commissioned and sworn for the parish of *New* Orleans, State of Louisiana, and in presence of the witnesses hereinafter named and undersigned, personally came and appeared before me Samuel L. Chambliss and James S. Brander, junior, both of this city, and Edward Matthews, of the city and State of New York, the latter acting, as well in his own name as in his capacity of agent and attorney in fact, of James S. Brander, senior, late of this city, but now residing in the city of New York, which said appearers declared that they had contracted ~~and~~ agreed, and do by these presents contract and agree, to form a copartnership in commendum for the transaction of the cotton factorage and general commission business in this city on the terms and conditions following, to wit:

The said copartnership shall commence on the day of the date thereof, and continue until the first day of July, eighteen hundred and sixty-two, unless sooner dissolved, as hereinafter provided for.

The said James S. Brander, junior, Samuel L. Chambliss, and
45 Edward Matthews are hereby declared to be the active partners, and the said James S. Brander, senior, the partner in commendum, and the business of the copartnership shall be transacted and carried on under the style and firm of Brander, Chambliss & Co.

The said active partners acknowledge to have received the sum of twenty thousand dollars from the said James S. Brander, senior, which he has invested in the capital of the said firm on behalf of and as the share of his son, the said James S. Brander, junior; and the said Edward Matthews in his capacity of agent of the said James S. Brander, senior, hereby binds his said constituent to invest in the capital of said firm the sum of thirty thousand dollars, as the same shall be collected and secured from the firm of Brander and Hubbard, of this city, of which he is a member; and to this extent alone, say thirty thousand dollars, shall the said James S. Brander, senior, be held liable as partner in commendum in the said firm of Brander, Chambliss & Co.; and the said Edward Mathews, in his own name, has invested in the capital of the said firm the sum of thirty-five thousand dollars, now to be taken from the individual assets of the said James S. Brander, senior, in the said firm of Brander & Hubbard, and binds himself to invest a further sum of fifteen thousand dollars in cash within sixty days from the date thereof.

The respective interest or shares of the said copartners in the profits and losses of the said joint business, are hereby declared to be as follows: That of the said Edward Mathews one-half; that of the said Samuel L. Chambliss one-third; and that of the said James S. Brander, junior, one-sixth; the said James S. Brander, senior, partner in commendum, being only entitled to interest at the rate of eight per cent. per annum on the amount of capital invested by him.

In the transaction of the business of the said firm, it is here understood and agreed that the firm shall never purchase nor hold at any one time more than one thousand bales of cotton, nor shall any purchases be made for shipment, but only for sale in New Orleans.

46 Neither of the said active partners shall transact any business

in his individual name, or for his separate benefit and advantage, nor use the name of the firm in any manner, or for any purpose other than the legitimate business of the copartnership.

Proper books of account shall be kept by the said active partners, wherein shall be duly entered and set down all purchases and sales, receipts and disbursements, and all other transactions of the firm, which books shall at all times be open to the inspection and examination of all the said contracting parties.

An interest account shall be kept between the said copartners, debiting and crediting each with interest at the rate of eight per cent. per annum on all sums of money received and paid or invested by him.

In case of the violation of any of the foregoing stipulations by any one of the copartners, the others or either of them shall have the right to terminate the copartnership.

In case of the death of *any* of the said copartners, his interest in the said firm shall thereupon terminate, but the amount which shall then be due him shall only be paid to his heirs or legal representatives at the expiration of the term of this copartnership, and in proportion as the debts are collected or the assets realized; it being well understood and agreed, however, that the heirs or legal representatives of the deceased shall have the rights, if they think proper, to take his place and continue the copartnership until its expiration by limitation.

And it is further agreed upon and understood that a copy of this act shall be immediately transmitted to the said James S. Brander, senior, for his approval, and that in case of his refusal the present contract shall become null and void.

Done and passed in my office, in the city of New Orleans, on the day, month, and year first above written, in presence of William G.
47 Latham and Prosper Camus, witnesses, who have signed with the said parties and me, notary, after reading the whole.

S. L. CHAMBLISS.
EDWARD MATHEWS.
JAS. S. BRANDER, JR.
P. CAMUS.
W. G. LATHAM.
THEO. GUYOL,
Notary Public.

The foregoing is a true copy of an act of copartnership extant in the registers of Theodore Guyol, late notary public, which are in my possession and custody, as his successor in office.

JOHN McCULLOCH, *Notary Public,*
Successor of Theodore Guyol, Notary Public.

G. BURKE.

At the execution of a commission for the examination of witnesses, between Nelson McStea, plaintiff, James S. Brander, j'r, Samuel L. Chambliss, and Edward Mathews, defendants, this paper-writing was produced and shown to Glendy Burke, and by him deposed unto at the time of the examination, before—

MILES TAYLOR,
CHARLES A. PEABODY,
Commissioners.

48 Per Mr. Brander.

(Copy.) A 1.

NEW YORK, *May 4th*, 1861.

Messrs. BRANDER, CHAMBLISS & Co.,
New Orleans.

GENTLEMEN: I enclose duplicate Duncan, Sherman & Co. check on Conner & Son, original sent to day by express, for $2,300; also I enclose 15 coupons of 30 each, together $450 of the Lou. State bonds, and send by Mr. Brander 14,250 certificate of deposit Merchants' Bank, to be exchanged at Louisville for checks on New Orleans, making my remittance, including check yesterday for $3,000, $20,000.

Can remit more in an hour's time, if positively requested. If you must have it at once, telegraph me, and I can telegraph Clarke Brothers to check on New York, and send you check for $10,000, which can be in New Orleans on the 5th day from the date of your despatch, probably.

Yours, &c.,

E. MATHEWS.

G. Burke (written across the face.)

At the execution of a commission for the examination of witnesses, between Nelson McStea, pl'ff, and James S. Brander, j'n'r, Sam. L. Chambliss, and Edward Mathews, defendants, this paper-writing was produced and shown to Glendy Burke, and by him deposed unto at the time of the examination, before—

MILES TAYLOR,
CH. A. PEABODY,
Commissioners.

49 (Correct copy.) A 2.

G. BURKE. NEW YORK, *May* 30, 1861.

DEAR SIR: I wish you to read the enclosed letter to and from James, before you hand it to him.

I have shown his letter to Mr. B., s'n'r, who has written, as enclosed, for James to follow your advice and mine.

When Mr. B. proposed my giving James a small interest in the house to retain his name, I told him I was willing to do so on one condition, that he should have no control over the business, in any way, as he knew he was not competent, and I shall not allow him now to have any control whenever opposed to me, for I own not only ½ of the new house, but half of both of the old houses, and I want it distinctly understood that I am the head of the house, and that you represent me as well as the house.

Mr. C. is a planter, and not a merchant as yet, though I think he will make a good one with proper experience; but, as yet, the management of the house must devolve on you and me.

I asked you, when I left New Orleans, to write me, privately, often, but have not a single such letter from you since I left. I wrote you some 3 weeks ago, I think, asking you to inform me of James' habits—whether he drinks at all, or has done so, since I left, but have no reply, and am afraid, from your silence, that he has gone back to his old habit, and you have not, from motives of delicacy or kindness to him, addressed me. This is wrong, for I ought to know it at once if he drinks, or if he does not attend to business properly. I wrote you early this month,

when James was here, that I did not like his threats, and did not feel safe to have any of my money or property in his hands, and that I could not remit unless you had exclusive control of all business finances, &c., and have had no reply from you to this letter. I am willing to do all I can that is reasonable to aid the house, but cannot consent to
50 have my money or that of my wife under his control, in any way whatever. His father, whose wish he has always obeyed, has written him several times to do as you and I directed. You represent me, and you know always my views. We, you and I, do not, I know, as yet quite agree on some points of business, but when we understand each other better, I trust these differences will disappear. If you and Mr. Chambliss think it is better to do nothing on our own acc. and cannot be convinced to the contrary, I shall yield, tho' we may not make half commissions enough to pay our expenses the coming year, for I want all to go on harmoniously between Mr. C. and myself, and had rather forego making anything than not to go on pleasantly so long as we are partners. I hope when Mr. C. comes to town, he will aid you in raising some money. You, having all Brander & Hubbard's assets, and being on the spot, should not look to me for all the money, but should raise your share. I have done now all and more than I promised, and am willing to do all I can, with proper aid, in New Orleans.

Your ob't serv't,
(Signed) E. MATHEWS.

Please write to me frankly whether you think it would be to the interest of the house to have James to leave.

G. BURKE (written across the face.)

At the execution of a commission for the examination of witnesses, between Nelson McStea, pl'ff, and Ja's S. Brander, jun., Samuel Chambliss and Edward Mathews, defendants, this paper-writing was produced and shown to Glendy Burke, and by him deposed unto at the time of the examination, before—

MILES TAYLOR,
CH. A. PEABODY,
Commissioners.

51 A 3.

NEW YORK, *May 7th*, 1861.

Messrs. BRANDER, CHAMBLISS & CO., *New Orleans.*

GENTLEMEN: I have nothing from you since mine of yesterday by express. There is no change in matters here. Sterling is always saleable here at the quotations. If you can purchase A 1 bills at 93 to 95, and draw on me at one per cent. discount, or if you can purchase them at 95 (1 *d*) sight-bills on me at par, it is a good operation. If any factor or others wish to ship cotton through you to Live'pool, and can wait ten or fourteen days for the money, you will please advance and allow current rate for the sterling and send B *l* L to order to me, and I will remit you the money in checks at once.

The shippers must be responsible in case there is any loss or ship should not get out. Until it is known that all ships loading will be allowed to depart, it is not safe to advance before ships pass the bar, and can agree to give them the money then. I throw out these suggestions, to act on if you think all is quite safe, for I do not wish in these times

to take any risk. I may send you some money to be employed in this way. I believe there will be opportunity to make money now and then all the season if we are on the lookout.

I think at present low price of cotton it is quite safe if it can be shipped, and I had much rather have my means in it than locked up in any plantation, or in the hands of the richest planter in the country, and I consider very much safer, for in this case you have the cotton itself on ship-board, and in the other, you advance on the growing crop, which when raised may be worthless in consequence of blockade.

I again urge you to prepare for a long civil war and utter ruin to the South, if they do not give up their separate government,
52 for the North have the power and will use it to maintain the U. S. Government, even if they have to destroy the whole South. They say it must come sooner or later, as two governments cannot live on this continent, and it may as well come now as any time.

Your ob. ser'vt,
(Signed) EDWARD MATTHEWS.

G. BURKE (written across the face.)

At the execution of a commission for the examination of witnesses between Nelson McStea, plaintiff, and Ja's S. Brander, jr., Samuel L. Chambliss and Edward Matthews, defendants, this paper-writing was produced and shown to Glendy Burke, and by him deposed unto at the time of the examination, before—

MILES TAYLOR,
CH. A. PEABODY,
Commissioners.

A 4.

NEW YORK, *May 21st*, 1861.

Messrs. BRANDER, CHAMBLISS & CO., *New Orleans.*

GENTLEMEN: I have nothing from you since mine of yesterday; have a despat'h from Elder, stating he had sent $7,000 of the N. Y. certificates to N. Orleans, so I presume for the time being there is no N. Orleans checks there; presume you will be able to sell them to parties who want to remit, at one per cent. discount, or ¼ under what the bank check at.

Your ob't serv't,
(Signed) EDWARD MATTHEWS.

Please write whether you think the enclosed note will be paid. They are patent-medicine dealers, and reported rich.

G. BURKE (written across the face.)

53 At the execution of a commission for the examination of witnesses between Nelson McStea, plaintiff, and James S. Brander, jr., Samuel L. Chambliss, and Edward Matthews, defendants, this paper-writing was produced and shown to Glendy Burke, and by him deposed unto at the time of the examination, before—

MILES TAYLOR,
CH. A. PEABODY,
Commissioners.

Plaintiff's counsel read in evidence the four letters from defendant Matthews, marked respectively, "A 1," "A 2," "A 3," and "A 4." (See pp. 44, 45, 47, & 48.)

The plaintiff's counsel offered in evidence the acceptances and promissory note in suit.

The counsel for the defendant, Edward Matthews, objected that there was no sufficient proof that said Matthews was a member of the said firm of Brander, Chambliss & Co.

Secondly. That, by the act of war between the United States and the Confederate States, *that* the firm of Brander, Chambliss & Co., if it were ever formed, was dissolved prior to the making of the acceptances and promissory note, and each of them.

Thirdly. That the firm, if formed, was proved to have been dissolved prior to the making of the acceptances numbers two (2) and three (3) and the note number four (4.)

Fourthly. That the power of attorney to Glendy Burke to accept the drafts numbers (3) and four, (4,) and to sign the promissory note for Brander, Chambliss & Co., was annulled by the act of war prior to the maturing of the said acceptances and the said note.

The court overruled the objections and each of them, and the defendants' counsel excepted.

54 The plaintiff's counsel then read in evidence the said acceptances and promissory note. (See pp. 17, 18, & 19.)

The plaintiff's counsel then read the power of attorney from Brander, Chambliss & Co., to Glendy Burke. (See p. 36.)

Plaintiff's counsel then rested.

The defendant's counsel then called on the part of the defence,

JOHN V. GATENBY, who swore that he knew the defendant, Edward Matthews; that he was in New York in 1861, having a place of business in Exchange Place; that he had a dwelling-house on the Fifth avenue at that time, and has ever since resided here; he resided here before. Witness had transactions with Mr. Matthews in New York, in June, 1861.

The defendants' counsel then read the articles of copartnership of Brander, Chambliss & Co. (See p. 40.)

The defendants' counsel then read the testimony of James S. Brander, senior, taken in the case of Charles D. Hubbard, before a referee, and the plaintiff's counsel read the cross-examination.

Q. When did you leave New Orleans?
A. Do you mean permanently?
Q. Yes, sir.
A. Well, I left New Orleans in 1859—May, 1859—to reside here.
Q. Have you been there since?
A. Yes.
Q. What time have you been in New Orleans since May, 1859?
A. I was in New Orleans in the fall of 1859.
Q. And when did you leave there?
55 A. I left there some time in December for New York.
Q. And have not been since?
A. Yes, sir; I was there about a week, I think, in April, 1860. I was gone from here about three weeks altogether.
Q. And have not been since?
A. Not been since.
Q. Were you in the island of Nassau in the spring of 1861?
A. Yes, sir.

Q. Did you receive from any one a copy of a proposed copartnership of Brander, Chambliss & Co. in writing?

A. Yes.

Q. From whom?

A. From the defendant in this case.

Q. While you were at Nassau?

A. Yes, sir.

Q. Did you receive an article for your signature before a consul, or before the American consul, or before a commissioner?

A. Approving of that copartnership? Yes.

Q. You received it?

A. Yes, an article, from my partner in the copartnership, to be signed before a commissioner, or the American consul.

Q. Did you sign the article?

A. No, sir; I declined signing it.

Q. Did you decline to sign it?

A. I did.

Q. When did you return from Nassau to New York?

A. I think it was about the 19th of May—the 18th or 19th.

Q. '61 that would be?

A. '61.

Q. Did you decline to Mr. Matthews in New York? Did you decline to approve of the copartnership to the defendant?

Question repeated.

A. I did.

56 Q. Did you ever approve of the copartnership?

A. To my recollection, I never did.

Cross-examination:

Q. Is the letter now shown you, Mr. Brander, in your handwriting, and was it sent by you to the plaintiff Hubbard, at the time of this date?

A. Yes, sir.

Q. Were the statements made by you in this letter true?

A. True as to partnership.

Q. Are the statements in this letter true, all of them?

A. Yes, I think they are.

(Counsel shows another letter to witness.)

Q. Please look at the letter now shown you, and say if it is in your handwriting, and if it was sent by you to the plaintiff Hubbard about the time of its date.

A. Yes, that is my handwriting, and sent by me at Havana; yes, I wrote that letter.

Q. Are the statements therein true, Mr. Brander?

A. I believe they are, sir.

(Plaintiff's counsel offers the two letters in evidence. They are marked, the first, Exhibit D; the second, Exhibit E.)

EXHIBIT D.

NASSAU, 14*th February*, 1863.

Mr. C. D. HUBBARD,
(Care of Woodruff & Co., New York.)

DEAR SIR: I only received your favor of 5th ult., with duplicate, last Saturday, or I would have replied sooner. I note that you are in New York to get a settlement with Edward Matthews of his indebtedness to you. I will now reply to your enquiries about the copartnership

57 of Brander, Chambliss & Co. He had my full authority to purchase your interest in Brander and Hubbard's business, provided Mr. Chambliss and my son James agreed to join him, and they should assume all the liabilities of Brander and Hubbard; but I never contemplated that he was to make me a special partner in the new concern of Brander, Chambliss & Co., and had no more authority from me than you had in doing so. Consequently I took no further notice of the copartnership. By denying his act would only publicly expose him, and consequently, by my silence to all parties interested, I am responsible for his acts, and do not wish to avoid any liability.

In any respect Mr. Matthews is morally and legally bound to you for all the debts remaining unpaid, and I hope you will take active steps to make your money; and it is with pain I say it, that you can place no reliance on his word. You would be perfectly surprised to hear how badly he has treated me. He now owes me upwards of $75,000, and have got very little security, and cannot get a dollar from him; but I hear from others, as coming from himself, that he has been making considerable money, and sooner you prosecute your claim the better; and if he finds you are in earnest, he may pay you. On my return to New York I shall be compelled to take steps against him. It is sad and melancholy to see the state of affairs in New Orleans, and God only can see what the result of this unnatural war is to be, or when and how it is to end.

I am dreadfully affected with rheumatism, and can scarcely write. Mrs. B.'s health is about the same, and begs to be remembered to you.

Yours very truly,

JAMES S. BRANDER.

58 EXHIBIT E.

NEW YORK, 21*st May*, 1863.

Mr. C. D. HUBBARD.

DEAR SIR: I have received your favor 1st inst. on my arrival here last Monday, and note particularly all you say, and regret to find that James has been compelled to leave. I will write Mr. Burke to attend to everything he possibly can in the present unsettled state of affairs, and God only knows what the result is to be. You are personally interested in all the different concerns, and know more about the situation of everything than any other person, and you know I always relied upon you, and hope and expect that you will give Mr. Burke every aid in your power, and will write him to that effect. I have already told you that any aid I can give you in your suit against Matthews I will cheerfully do, for I expect to be compelled to institute suit against him myself, and will require similar aid from you, for he owes me a large amount, besides the $35,000 given him to pay for your interest; and probably it would be well for you to send me an authenticated statement and account, and stating it was out of my private means, and had nothing to do with the funds of the concern. Get it affirmed by yourself, Burke, and the book-keeper. By the articles of copartnership Matthews is bound to pay me the balance due me by B. and H., all of which I submit to your consideration. I hear from reliable authority that Matthews has made money, but how long it will last God only knows, for he has become a complete gambler in everything, and will pay nothing unless compelled. I am lame, but will endeavor to see Mr. Marsh, and will probably have to see him about the debt I settled for Matthews with Woodruff.

Mrs. B. requests to be remembered to you, and regrets to find the air is too bracing, and now confined to her bed.

Yours very truly,

JAMES S. BRANDER.

59 Q. Was that by virtue of a power of attorney from you?

A. Yes, sir.

Q. Was that power of attorney the one, a copy of which is marked "Ex. C," as annexed to the deposition of William Shannon in the commission Ex. A?

A. Yes, I believe this is. I think there were two powers of attorney, though.

Q. And this, you think, sir, is a copy of one of them?

A. Yes.

Q. Is the defendant Mathews a son-in-law of yours, Mr. Brander?

A. Yes, sir.

Q. Were you partner in commendam in the firm of Brander & Hubbard, of New Orleans?

A. Yes, sir.

Q. Was your firm dissolved on the 27th day of March, 1861?

A. I think it was, sir.

Q. Please look at "Ex. A," annexed to the deposition of Glendy Burke, in the commission "Ex. A," on this reference, and say if that is a copy of the act of dissolution of that firm.

A. I was not *not* there, sir. I was not present when that occurred. I was in Nassau.

Q. Did you understand this act of dissolution was signed in your name by Edward Matthews, as representing you?

A. That is the first I have heard of it—of my name's being signed.

Q. How did you understand the firm of Brander & Hubbard to have been dissolved?

A. I authorized my son James S. Brander, j'r, to dissolve the business, when a partnership was formed by him, Chambliss, and Matthews.

Q. Was there any act of dissolution of the firm of Brander & Hubbard, to your knowledge, other than the one a copy of which is now shown you?

A. No; not to my knowledge.

60 (Counsel states that the one shown the witness is "Ex. A," in the testimony of Glendy Burke, in the commission "Ex. A.")

Q. Well, was the endorsement of Brander & Hubbard on these five notes, made on the settlement of the partnership affairs of Brander & Hubbard?

A. I suppose Brander & Hubbard; that is Brander & Hubbard's endorsement.

Mr. SHERWOOD: This signature?

A. Mr. Hubbard's signature.

Q. Was that made on the settlement of the partnership affairs?

A. I presume so, sir.

Q. And so of each of the notes—of those in the same way?

A. Yes, sir. It could not have been negotiated without his endorsement.

Q. Was that to pass the note from the firm of Brander & Hubbard to you?

A. I knew nothing about that being charged to me until I received my account-current from Brander & Hubbard.

Q. And then were these five notes received by you, as a portion of your assets of the firm of Brander & Hubbard?

A. That I found so by my account-current. In my account-current the firm owed me a large balance; that was in part payment. Brander & Hubbard paid that to Edward Matthews as part payment. The firm of Brander & Hubbard owed me a large amount individually.

Q. Was that endorsement of Brander & Hubbard for the purpose of passing it from the firm to your account?

A. Of course; it could not be negotiated otherwise. It was not paid; they were bound to me for it.

Q. Is that so?

A. Yes.

Q. Did Mr. Matthews consult you about buying out Mr. Hub-
61 bard's interest in the firm of Brander & Hubbard for $35,000?

A. He wrote me that he had purchased his interest for $35,000.

Q. Did you agree that Matthews might take the money and notes to pay that $35,000 with to Hubbard, out of the assets of Brander & Hubbard received by you?

A. When he went to New Orleans I authorized Mr. Matthews to purchase out Mr. Hubbard's interest from the assets of the concern. To procure them he was to take pay for his interest. If he purchased Mr. Hubbard's interest he was to pay him out of the assets of the concern, in long paper, maturing that and next year, which matured that and next year, because if he took money or short notes (short paper) it would weaken the concern; and I never knew that the notes and money were charged to me until I received my account-current from Brander & Hubbard, some time in July.

Q. Who represented you at New Orleans, in March, 1861?

A. Edward Matthews, the defendant.

Q. And he held, then, the power of attorney?

A. He held powers of attorney to collect my debts—to collect or compromise my debts in any way he thought proper.

Q. Were these five notes, which are now in suit, a portion of the paper thus taken by Mr. Matthews and paid to Mr. Hubbard on that purchase?

A. My impression is, sir, that they were given for that purchase, and Brander & Hubbard advised me that they were given for that purchase, afterwards, under my power of attorney I gave to Mr. Matthews.

Q. When did you first hear that the firm of Brander, Chambliss & Co. had been formed?

A. Well, I think it was the first week in May, at Nassau.

Q. And at that time did you hear that you had been in that firm, by Mr. Matthews, as partner in commendam?

A. Yes, at that time.

62 Q. Was the act of forming that copartnership sent to you by Mr. Matthews at that time?

A. There was an instrument sent me, drawn up by the notary, requiring my written sanction, sent to me at that time.

Q. Was that paper the act of copartnership? (I have a copy of it here.)

A. I think it was, sir. It was an instrument, to my recollection, served on me, drawn up by the notary for me to sign, to give my sanction. That is my recollection of it. The articles of copartnership may have accompanied, but I don't recollect. My impression is it was an article drawn up by a notary for me to sign. The articles of copartnership may have accompanied, but my impression is they did not, though.

Q. And these were in the letter of Mr. Matthews to you?

A. Yes, sir.

Q. Did you take any public steps, or any other steps, to repudiate that partnership?

A. I did not, sir, because it was a public document. If anybody felt interested he could examine the documents.

Q. Did you know of the dissolution of the firm of Brander, Chambliss & Co.?

A. Yes. I know it was dissolved by my authority, before the other could be formed.

Q. Brander, Chambliss & Co.; I don't speak of Brander & Hubbard?

A. No, sir; I don't know that I did. I heard, by rumor, that it was dissolved, since it was dissolved—some time in October, I think.

Q. March, '61?

A. In March, '61; yes, Brander & Hubbard. I heard that Brander, Chambliss & Co. was dissolved in October, 1861.

Mr. SHERWOOD: That is, the first year of the war?

A. Yes, sir.

Q. James S. Brander, jun., is your son, I suppose?

A. Yes, sir.

63 Look at Exhibit E, in the deposition of Mr. Hubbard, in commission Exhibit A, and say if it is in your handwriting.

A. Yes, sir; that is my writing.

Q. Was there a newspaper in March, 1861, published in New Orleans, known as The New Orleans Price Current, Commercial Intelligencer, and Merchants' Transcript?

A. Yes, sir.

Q. Had that been long published, Mr. Brander?

A. Several years.

Q. And was it a commercial paper of repute?

A. Yes, sir.

Q. Of character and repute?

A. Yes.

Q. Is the newspaper now shown you one of the daily issues of that paper?

A. I think it is a weekly, sir, or semi-weekly; part of the season weekly, part semi-weekly, this Price Current.

Q. What do you think of that, (referring to paper shown to witness,) Mr. Brander; does that look like a copy of that paper—one of its issues?

A. Yes; it is the Price Current, issued in the business season semi-weekly, in the dull season weekly.

Q. What did you say, Mr. Brander, is the time of the issues of that paper?

A. Yes, sir.

Q. Were you in the habit of taking this paper, Mr. Brander?

A. I was, when I was in business in New Orleans.

Q. Was it the main commercial paper there?

A. Yes, sir; for statistics.

Q. Do you know by whom the notice of the formation of the firm of Brander, Chambliss & Co., and of the dissolution of the firm of Brander & Hubbard, now shown to you in this issue, were inserted? ("Inserted" in the stenographer's minutes.)

A. I presume, sir, by some of the partners.

Read in evidence, subject to objection, and marked "Ex. F."

64 EXHIBIT F.

New Orleans Price Current, Commercial Intelligencer, and Merchants Transcript. (Vol. XXXII.)

NEW ORLEANS, *Saturday Morning, March* 30, 1861.

No. 57.

DISSOLUTIONS AND COPARTNERSHIPS.

COPARTNERSHIP.—The undersigned have this day formed a copartnership for the transaction of a "general factorage and commission business," under the firm of Brander, Chambliss & Co., in continuation of the business of the late firm of Brander & Hubbard, as per act before T. Guyol, notary public, of this date.

SAMUEL L. CHAMBLISS.
EDWARD MATTHEWS.
JAMES S. BRANDER, JR.
JAMES S. BRANDER, SEN R,
(In Commendam,)
By EDWARD MATTHEWS,
Attorney.

NEW ORLEANS, *March* 28, 1861.

DISSOLUTION.—The copartnership heretofore existing between the undersigned, under the firm of Brander & Hubbard, is this day dissolved by mutual consent. Either partner will use the name of the firm in liquidation only.

CHA'S D. HUBBARD.
JAMES S. BRANDER, JR.
JAMES S. BRANDER, SEN'R,
By EDWARD MATTHEWS,
Attorney.

NEW ORLEANS, *March* 28, 1861.

65 Q. After March, 1861, when first were you in the city of New York?

A. I think I arrived here on the 19th of May.

Redirect examination:

Q. Mr. Brander, in your cross-examination, this question was put to you: "Was there, to your knowledge, any other act of dissolution of Brander & Hubbard, than the one which is now shown to you?" I wish to know whether you recognized that one from your own knowledge, in any shape?

A. No; I did not know it of my my own knowledge, because I was not there.

Q. Did you authorize the transfer to Hubbard of the notes in suit and of the payment in cash of $10,000?

A. No. In my letter to Hubbard I authorized him to take in long paper.

Mr. MARSH: But did not give specific authority as to these notes?

A. I authorized Mr. Hubbard to take long paper, and not money of the assets of Brander & Hubbard. I gave no specific authority on the subject of these notes.

Q. Do you know anything more about that paper, Mr. Brander, than that it appears to be a paper of that kind—(Ex. F?)

A. Nothing more than what it represents on its face.

Q. Do you know anything as to the insertion of the notices referred to, except merely from reading them?

A. Nothing further.

Q. You know nothing as to who caused the insertions to be made personally?

A. I know nothing further than what the paper represents.

Recalled:

66 Q. Since your examination in this case, before the referee, have you had occasion to compare or examine, and have you examined the two letters written by you to Mr. Hubbard?

A. Yes; I have examined them more minutely, and wish to make an explanation.

Q. Will you please to make that explanation?

A. When I wrote those letters to Mr. Hubbard, I had difficulty with my son-in-law in some money matters.

Q. Mr. Matthews?

A. Yes. Since examining the copies of the letters more minutely, I find, from many circumstances and explanations since, that I have done the defendant injustice.

Q. In the statements made in those letters?

A. Yes. I wish now to withdraw all I have written about his veracity. I furthermore state that when I wrote Mr. Hubbard those letters, I was under the impression that the clause in the articles of copartnership "null and void," referred only to one; that my attention was called to the articles of copartnership in August, 1863, at West Point, by another partner, and I there found that it referred to the general partners.

Q. Have you any explanation to make, or have you anything to say as to an expression used in the letter of 14th February, 1863, as to your liability, on account of your silence, to parties?

A. Third parties?

Q. Not concerned in the partnership?

A. Mr. Hubbard in his letter thought I ought to give public notice that I was no partner, and in mine I made the remark that I did not wish to avail myself of anything to avoid any liability I might have incurred under any authority given to the defendant; that was all.

Q. Your remark, then, was in answer to this?

A. In answer to Mr. Hubbard's inquiry about my giving public notice.

Q. And it was made, then, under mistake of facts?

A. Under mistake about the power.

Q. As to the necessity of taking such action?

A. Yes, sir.

67 Cross-examined:

Q. The remark to Mr. Hubbard, which you say your letter was in reply to—was that a verbal remark made by him to you?

A. No, sir.

Q. Or in a letter?

A. My impression was, in his letter. I have no copy of his letter.

Q. Please produce the letter.

A. I have not got it; never kept any private letters. That is my impression, it was in reply to his saying that I ought to have given public notice.

Q. Have you any recollection of where you received that letter?

A. Nassau.

Q. You say that you were under the impression, when you wrote it, that the words "null and void" in the document of March 27th, 1861, referred only to you. How did you know that the words null and void were in the document?

A. I read the document casually only. I thought it only referred to me.

Q. Had the document been sent to you?

A. I think it had.

Q. The difficulty that you speak of as existing between Mr. Matthews and yourself—did that culminate in a law-suit between you?

A. Yes, sir.

Q. You sued him, did you?

A. Yes, sir.

Q. What did you sue him for?

A. For different sums of money he owed me.

Q. Are you able at this time to specify what those sums were?

A. No; I am not.

Q. Did you claim against him in that suit the $35,000 which he had paid to Mr. Hubbard on the purchase of his interest?

A. Yes.

68 Q. Did that suit go to trial?

A. No.

Q. Was it settled?

A. Yes; settled privately.

Q. At the time of your writing these two letters to Mr. Hubbard, did you believe the statement you made in them to be true?

A. At that time I had some difficulties, but was honest at the time I wrote those letters.

Q. Did you intend to make any misstatement of fact to Mr. Hubbard in these letters?

A. No; I never intended to misstate facts. I was honest at the time.

Q. Then I suppose you believed them to be true at the time you wrote them?

A. I believed some statement at the time.

Q. And have you had any occasion to change your views on that subject, until after you had settled that suit you brought against Mr. Matthews?

A. Yes, sir; the occasion was some certain explanations.

Q. Made by Mr. Matthews?

A. Yes; and by others, too.

Q. Did you know, at the time you wrote these letters, how much Mr. Matthews was indebted to you?

A. No; I did not know the exact amount.

Q. About the amount?

A. A considerable sum—$70,000, I suppose. He claimed he had claims against that.

Q. I don't ask what the facts were. I ask merely whether you knew what his indebtedness to you was? Were the transactions out of which this indebtedness arose transactions that you knew about at the time?

A. For money loaned and debts assumed for him.

Re-direct:

Q. Mr. Brander, is the letter of Mr. Hubbard, to which yours of the 14th February, 1863, is an answer—is that letter lost or destroyed?

69 A. It is lost. I never kept any private letters.

Mr. MARSH: Do you mean lost or destroyed?

A. I cannot say which.

Mr. MARSH: Were you in the habit of tearing up letters you received?

A. Private letters I never filed.

Mr. MARSH: What did you do with them?

A. Tore them up, I suppose; destroyed them.

"Plaintiff's counsel also read in evidence a letter from James S. Brander, senior, to Charles D. Hubbard, dated February 14, 1863, and a letter from same to same, dated May 21, 1863." (See pp. 52 & 54.)

"Plaintiff's counsel also read in evidence an advertisement, published in the New Orleans Price Current, under date March 30, 1861." (See p. 60.)

The defendant's counsel then called as a witness EDWARDS PIERREPONT, who testified that he knew Edward Matthews; that he was now in Europe; that he had known him since 1857, and had been his general counsel. Mr. Matthews resided here in 1861, and had resided here ever since.

The defendant's counsel read in evidence the following proclamations of President Lincoln, of the dates of April 15, 1861; April 19, 1861; April 27, 1861; May 3, 1861, and August 16, 1861; also the act of Congress of July 13, 1861.

The plaintiff's counsel read in evidence the proclamation of May 12, 1862, with the regulations of the Treasury Department; also the proclamation of April 2, 1866.

70 The plaintiff's counsel proved interest on the several acceptances and the promissory note, according to the following statement:

Computation of interest.

Acceptance of Walker, Cheatham & Co.'s draft, April 23, 1861, at 12 months, due April 26, 1862		$8,050 06
Interest from June 1, 1862, to March 11, 1867, at 5 per cent.		1,923 06
Total due on 1st acceptance		$9,973 12
Acceptance of M. Harris' draft, dated February 20, 1862, payable Oct. 7, 1862, due Oct. 10, 1862	1,169 79	
Interest at 5 per cent. to March 11, 1867	258 49	
Acceptance of M. Harris of same date, payable at same time	107 97	
Interest at 5 per cent. to March 11, 1867	23 84	
Note of Brander, C. & Co., per G. Burke, dated Jan. 2, 1862, at 4 mos., due May 5, 1862	864 25	
Interest from June 1, 1862, at 5 per cent., to March 11, 1867	206 45	
		$2,630 79
		$12,603 91

The defendant's counsel objected to the allowance of interest:

1. That interest was not to be allowed on the several drafts or the promissory note.

71 2. That interest was not to be allowed until the termination of the war, in 1865.

3. That interest was not to be allowed until after the capture of New Orleans, in May, 1862.

(The court overruled the objections and each of them. The defendant's counsel excepted.)

The defendant's counsel moved to dismiss the complaint, on the ground that the plaintiff could not recover on the evidence in this case.

That Edward Matthews was not a member of the firm of Brander, Chambliss & Co., at the time of the acceptance of the drafts and the making of the promissory notes in suit.

That the formation of the firm was not sanctioned by Mr. Brander, senior; but that he had refused to sanction it.

That the approval of Mr. Brander, senior, was necessary to the formation of the proposed copartnership of Brander, Chambliss & Co.

That, admitting the partnership to have been formed, Mr. Matthews was not liable, as the firm had been dissolved—

1. By the acts of the parties, and the notice of the dissolution in October, 1861.

2. By the war of the rebellion.

3. By the proclamation of August 16, 1861.

72 That the action commenced in this court by the plaintiff, a resident and citizen of Louisiana, in 1864, could not be maintained against the defendant, a resident of New York.

(The court denied the motion and the defendant's counsel excepted.)

The defendant's counsel asked the court to charge the jury as follows:

1. That the defendant Matthews was not a member of the firm of Brander, Chambliss & Co.

2. That the action by the plaintiff, a resident of the State of Louisiana, commenced on the 3d day of March, 1864, and could not be maintained against a resident of the State of New York, for the reason that the plaintiff had no status in the courts of the State of New York until after the termination of the war.

3. That by the notice of dissolution, published in New Orleans, in October, 1861, the defendant Matthews, if he were before a member of the firm, ceased to be a member of the firm.

4. That, by the state of war existing in the State of Louisiana, the copartnership of Brander, Chambliss & Co. was dissolved as to the defendant Matthews, who was a resident and citizen of New York.

5. That by the state of war, copartnership was dissolved prior to the acceptance of the drafts of February 26, 1862, and the promissory note of January 2, 1862, and as to such acceptance and promissory note the defendant Matthews cannot be made liable as a member of said firm.

6. That by the proclamation of August 16, 1861, the said copartnership was dissolved.

73 7. The war of the rebellion rendered notice of the dissolution unnecessary.

8. That by the act of war, and by the proclamation of August 16, 1861, the power of attorney to Burke was rendered null and void as to the defendant Matthews, and he cannot be bound by the signatures of Brander, Chambliss & Co., per Glendy Burke, attorney.

The court refused to charge the jury as requested by the defendant's counsel, and also refused to charge any of the propositions requested.

(The defendant's counsel excepted to the refusal to charge as requested, and also excepted to the refusal to charge any of the said propositions, and also excepted separately as to each and every refusal to charge as requested.)

The defendant's counsel requested the court to charge the jury that the defendant was entitled to a verdict.

The court refused so to charge, and the defendant's counsel duly excepted.

The court then charged the jury to find a verdict for the plaintiff for the sum of $12,603.91, being the amount of said acceptance and note, with interest thereon at 5 per cent. per annum, as shown by the statements of interest hereinbefore set forth.

(To which charge the defendant's counsel duly excepted.)

The jury found a verdict for the plaintiff for the sum of twelve thousand six hundred and three ($12,603) dollars and ninety-one (91) cents.

74 *Opinion.—General term.*

New York. Common pleas.

NELSON MCSTEA, RESPONDENT,
vs.
EDWARD MATTHEWS, IMPLEADED, &C., APPELLANT.

STATEMENT OF THE CASE.

The defendant Matthews resided, at the time the causes of action mentioned in the complaint arose, and still resides in the city of New York. His codefendants, Brander and Chambliss, as well as the plaintiff, resided, and still reside, at New Orleans.

On the 27th day of March, 1861, the defendants, Samuel L. Chambliss, James S. Brander, junior, and Edward Matthews, acting for himself, as well as the attorney in fact of James S. Brander, senior, executed certain partnership articles, by which they agreed to form a partnership in commendam, or limited partnership, which partnership was to commence on the date of the copartnership agreement, and continue until the first day of July, 1862, unless sooner dissolved, as in the agreement provided for.

James S. Brander, junior, Samuel L. Chambliss, and Edward Matthews were to be the active or general partners, and James S. Brander, senior, the partner in commendam, or special partner.

At the time of the execution of these articles of copartnership James S. Brander, senior, was in the island of Nassau, and the partnership agreement provided that a copy thereof should be immediately transmitted to James S. Brander, senior, for his approval; and in case of his refusal, the agreement should become null and void.

75 A copy of the copartnership agreement was transmitted to James S. Brander, senior, which was received by him in May, 1861, and he at once refused to give his assent. In the mean time the firm of Brander, Chambliss & Co., went on with their proposed business, the defendant Matthews taking an active part in its management.

On the 23d day of April, 1861, at New Orleans, a draft was drawn, bearing that date, for $8,050.06, on Brander, Chambliss & Co., and accepted by them. From the testimony it is impossible to determine

whether the draft was accepted in the name of the firm by James S. Brander, junior, or by the defendant Matthews, as the witness Burke testifies in one place that Brander, junior, accepted the draft, and in another that the acceptance is in the handwriting of Matthews.

On the 26th day of April, 1861, the defendant Matthews, "acting for and representing this commercial firm of Brander, Chambliss & Co.," composed of himself and the other parties above mentioned, executed a power of attorney, appointing the witness Burke the attorney in fact of the said firm.

Matthews shortly after this left New Orleans for New York and never returned.

Prior to April 23d, 1861, the State of Louisiana had seceded from the United States.

On the 15th of April and 19th of April, 1861, the President, by his proclamation, declared that the insurrection existed, and that the ports of Louisiana, with those of other Southern States, were under blockade.

On the 13th of July, 1861, an act of Congress was passed authorizing the President to issue a proclamation declaring the inhabitants of any State where insurrection existed in a state of insurrection against the United States, and the act declared that thereupon "all commercial intercourse by and between the same, and the citizens thereof, and the citizens of the rest of the United States shall cease and be unlawful, so long as such condition of hostilities shall continue;" and on the
76 16th of August, 1861, the President issued his proclamation, declaring Louisiana, with other States, in a state of insurrection against the United States, and forbidding all commercial intercourse with the inhabitants of such States.

In October, 1861, Brander & Chambliss published a notice of the dissolution of the firm of Brander, Chambliss & Co., and of the withdrawal of the defendant Matthews therefrom.

On the 26th day of February, 1862, at New Orleans, a draft was drawn, bearing that date, on Brander, Chambliss & Co., for $1,169.99, and accepted by them, (per G. Burke, attorney,) and on the same day another draft was drawn for $107.97, and accepted in the same way by Brander, Chambliss & Co., and on the 2d day of January, 1862, said firm (per G. Burke) gave their promissory note for $864.25, and this action is brought upon the said three drafts and promissory note. The jury were instructed to find a verdict for the plaintiff, for the full amount claimed; to which direction the defendant Matthews duly excepted, and from the judgment entered upon this verdict this appeal is taken.

JOHN SHERWOOD,
Of Counsel for Appellant.
AUGUSTUS F. SMITH,
Of Counsel for Respondent.

VAN BRUNT, *J.*: The defendant Matthews claims that no recovery can be had against him in this action. 1st. Because he was not at the time of the acceptance of the drafts and the making of the promissory notes in suit, a member of the firm of Brander, Chambliss & Co. 2d. That if the partnership had been formed, Matthews was not liable, as the firm had been dissolved:

1. By the war of the rebellion.
77 2. By the refusal of Brander, sen'r, to sanction the formation of the firm.
3. By the proclamation of August 16th, 1861.
4. By the act of the parties and the notice of dissolution in October, 1861.

The fact that Matthews was a member of the firm of Brander, Chambliss & Co. would seem to be sufficiently established by the admission of Matthews himself, contained in the power of attorney to Burke, dated April 26th, 1870, wherein he describes himself as a member of that firm. There is no pretence that if that firm was never formed, that it was done at any other time than when the written articles of copartnership were signed, on the 27th of March, 1861; in fact the witness Burke testifies Matthews took an active part in the formation of the partnership and in the management of the business afterwards, and that, during the time that he remained in New Orleans, after its formation, he daily attended to its business; and that after he arrived in New York he wrote letters frequently in relation to the business of the firm.

Burke further testifies that the firm went on in their business without waiting for the assent of James S. Brander, senior, and that the draft of April 23d, 1861, was accepted under the personal supervision of Matthews. It would thus seem to be clear that the defendant Matthews was a member of the firm 23d of April, 1861, unless the firm had been dissolved by the rebellion.

This brings us to the consideration of the more difficult point in the case: What effect did the rebellion have upon agreements of this nature where the contracting parties resided in different sections, and were they dissolved by it; and if so, when? I need not attempt
78 to show that the breaking out of a war between two countries dissolves, by the mere force and effect of war itself, all existing partnerships between citizens or subjects of the two countries. (Griswold vs. Waddington, 16 John., 438.)

This principle has been so long settled that it is not now open for discussion.

In the case of the commencement of hostilities between two countries there is no difficulty in determining when a war began, and this is especially so as respects the United States of America, because the right of making war is lodged by our Constitution in Congress, and before war can exist it must be recognized or declared by the war-making power of the Government. But in the case of a rebellion, civil war, or insurrection, at first it might seem impossible to fix a general rule, which would serve as a clear and safe guide to all persons who may have been organized in commercial ventures in the district in which the rebellion or insurrection has arisen.

And this difficulty arises from determining when the insurrection attains the dignity of war.

Mr. Justice Nelson, in his dissenting opinion in the prize cases (2 Black, 638) has so ably and logically treated this subject that it only seems necessary to quote from that opinion in order to show what rule should govern the case now under consideration. He says: "In the case of a rebellion, or resistance of a portion of the people of a country against the established government, there is no doubt if, in its progress and enlargement, the government thus sought to be overthrown sees fit, it may, by the competent power, recognize or declare the existence of a state of civil war, which will draw after it all the consequences and rights of war between the contending parties, as in the case of a public war. Mr. Wheaton observes, speaking of civil war, 'But the general usage of nations regards such a war as entitling both
the contending parties to all the rights of war as against each
79 other, and even as respects neutral nations.' But before an insurrection against the established government can be dealt with on the footing of a civil war within the meaning of the law of nations

and the Constitution of the United States, and which will draw after it belligerent rights, it must be recognized or declared by the war-making power of the government. No power short of this can change the legal status of the government, or the relations of its citizens from that of peace to a state of war, or bring into existence all those duties and obligations of neutral third parties growing out of a state of war. The war-making power of the government must be exercised before the changed condition of the government and people and of neutral third parties can be admitted. There is no difference in this respect between a civil or a public war."

After discussing at considerable length the provisions made by the Constitution and acts of Congress for the suppression of insurrections, the learned judge continues: "The war carried on by the President against the insurrectionary districts in the Southern States, as in the case of the King of Great Britain in the American Revolution, was a personal war against those in rebellion; and with encouragement and support of loyal citizens, with a view to their co-operation and aid in suppressing the insurgents, with this difference, as the war-making power belonged to the King, he might have recognized or declared the war at the beginning to be a civil war, which would draw after it all the rights of a belligerent; but in the case of the President no such power existed; the war, therefore, from necessity, was a personal war, until Congress assembled and acted upon this state of things.

"Down to this period the only enemy recognized by the Government was the persons engaged in the rebellion; all others were peaceful citizens, entitled to all the privileges of citizens under the Constitution. Certainly it cannot rightfully be said that the President has the
80 power to convert a loyal citizen into a belligerent enemy, or confiscate his property as enemy's property."

On the 13th of July, 1861, Congress having been assembled on the call for an extra session, passed an act authorizing the President, by proclamation, to interdict all trade and intercourse between all the inhabitants of States in insurrection and the rest of the United States. In pursuance to the authority conferred upon him by that act, the President issued his proclamation, on the 16th day of August, 1861, embracing Louisiana and the other States in rebellion.

Mr. Justice Nelson observes that, "This act of Congress recognized a state of civil war between the Government and the Confederate States, and made it territorial. The act of Parliament of 1776, which converted the rebellion of the colonies into a civil territorial war, resembles, in its leading features, the act to which we have referred. Government, in recognizing or declaring the existence of a civil war between itself and a portion of the people in insurrection, usually modifies its effects, with a view, as far as practicable, to favor the innocent and loyal citizens or subjects involved in the war.

From the foregoing it must inevitably follow that a state of war cannot exist between the United States and a foreign government, or the United States and a portion of its own citizens, until a state of war is recognized by the war-making power, which, by our Constitution, is lodged in the Congress of the United States.

It would thus appear that war, under our system of government, can exist only by act of Congress, which requires the action of two of the great departments of the Government, the executive and the legislative.

The insurrection in the Southern States did not, therefore, before the passage of the act of Congress of July 13th, 1861, attain to the dignity

of war. This not only follows from our system of government,
81 but the rule thus established commends itself to our good judgment, as establishing a fixed and certain point of time when every man may know when his engagements with the residents of the districts in insurrection are dissolved by the mere force of the insurrection or war itself.

If any other rule is adopted, every person who may be engaged in business in that portion of the country in insurrection, or who may have commercial relations with the residents of such district would be entirely at a loss to determine when commercial intercourse with the residents of the insurrectionary district became unlawful, and when his engagements with such residents had become suspended by reason of such insurrection, but would be left to grope his way in the dark without any guide whatever to aid him. It is not the policy of the law to adopt a rule which involves uncertainty when preciseness can be as easily obtained.

The justice of the rule laid down by Mr. Justice Nelson commends itself to us, not only because it is most in accordance with the theory of our Government, but also because it is the one which will enable every man to act with certain knowledge as to the effect of his acts, and to ascertain when his commercial intercourse with the people in insurrection is illegal.

Applying these principles to the case now under consideration, it will be seen that the defendant Matthews is liable, as a member of the firm of Brander, Chambliss & Co., upon the draft of $8,050.06, dated New Orleans, April 23d, 1861, but that their firm being dissolved by the recognition of Congress of the existence of a state of war between the United States and the State of Louisiana and other Southern States, he is not liable upon the other drafts and the note mentioned in the complaint. The judgment must be reversed, with costs, to abide the event, unless the plaintiff stipulates to reduce his judgment to the amount of $2,630.79, in which case the judgment is affirmed.

82 At a general term of the court of common pleas, for the city and county of New York, held at the county court-house, in said city, on the 31st day of March, 1871.

Present, Hon's Charles H. Van Brunt and Frederick W. Loew, judges, &c.

NELSON MCSTEA, PLAINTIFF AND RESPONDENT,
against
EDWARD MATTHEWS, IMPLEADED WITH JAMES S. Brander, jr., and Samuel L. Chambliss, appellant.

The appeal of the defendant Edward Matthews from the judgment entered in this action on the seventeenth day of December, 1868, in favor of the plaintiff and respondent, and against the defendants above named, for the sum of fifteen thousand one hundred and eighty-nine dollars and seventy-five cents, having been argued, after hearing John Sherwood, esq., of counsel for said defendant and appellant Edward Matthews, and Augustus F. Smith, of counsel for said plaintiff and respondent, on motion of Martin & Smith, attorneys for said plaintiff, it is ordered that said judgment be reversed and a new trial granted herein, with costs to abide the event of the action, unless the said plaintiff, within forty days after service of a copy of this order, stipulate to

reduce said judgment by deducting from the face thereof the sum of ($2,630.79) twenty-six hundred and thirty dollars and seventy-
83 nine cents, and also the further sum of ($325.32) three hundred and twenty-five dollars and thirty-two cents, being interest on said sum of $2,630.79, from March 11, 1867, to December 17, 1868; and the further sum of $131.54, being five per cent. extra allowance on said sum of $2,630.79, making the total deduction from the face of said judgment the sum of ($3,087.65) three thousand and eighty-seven dollars and sixty-five cents: and should the said plaintiff so stipulate, the said judgment for the balance, viz, for the sum of ($12,102.10) twelve thousand one hundred and two dollars and ten cents, be, and the same is hereby, affirmed with costs.

(A copy.)

NATH'L JARVIS, JR., *Clerk.*

Court of common pleas for the city and county of New York.

NELSON MCSTEA, PLAINTIFF AND RESPONDENT,
against
EDWARD MATTHEWS, IMPLEADED WITH JAMES S. BRANDER, jr., and Samuel L. Chambliss.

The plaintiff and respondent in this action hereby stipulates to reduce the judgment entered on the seventeenth day of December, 1868, in his favor, and against the defendants above named, for the sum of fifteen thousand one hundred and eighty-nine dollars and seventy-
84 five cents, by deducting from the face thereof the sum of three thousand and eighty-seven dollars and sixty-five cents.

New York, March 31, 1871.

MARTIN & SMITH,
Att'ys for Pl'ff.

Court of common pleas for the city and county of New York.

NELSON MCSTEA, RESPONDENT,
ag'st
EDWARD MATTHEWS, APPELLANT, IMPLEADED with James S. Brander, jr., and Samuel L. Chambliss.

Judgment.—New York, March 31st, 1871.

The appeal from the judgment entered in this action, on the 17th day of December, 1868, for the sum of fifteen thousand one hundred and eighty-nine dollars and seventy-five cents, having been heard at the general term of this court, and an order having been duly made and entered, at said general term, bearing date the 31st day of March, 1871, reversing said judgment unless plaintiff shall stipulate to reduce the same by deducting from the face thereof the sum of three thousand and eighty-seven dollars and sixty-five cents, and affirming the judgment for the balance, viz, twelve thousand one hundred and two dollars and ten cents, with costs, should the plaintiff so stipulate, and
85 the said plaintiff having duly stipulated to reduce said judgment in accordance with said order of general term, and said stipulation having been duly filed, and said plaintiff's costs having been duly adjusted by the clerk at $130.42:

Now, on motion of Martin & Smith, attorneys for the plaintiff and respondent, it is hereby adjudged that the said judgment, entered December 17th, 1868, so reduced by said stipulation to said sum of twelve thousand one hundred and two dollars and ten cents, be, and the same is hereby, affirmed.

It is also adjudged that Nelson McStea, the respondent, recover of the defendant Edward Matthews the sum of one hundred and thirty dollars and forty-two cents, his costs of appeal.

March 31st, 1871.

NATH'L JARVIS, JR., *Clerk.*

Filed March 31st, 1871, at 3 o'clock and 45 m.

NELSON MCSTEA, RESPONDENT,
ag'st
EDWARD MATTHEWS, APPELLANT, AND OTHERS.

Take notice that the defendant and appellant Edward Matthews hereby appeals to the court of appeals from the judgment entered herein, on the 31st day of March, 1871, for $130.42 *dollars*, which
86 said judgment affirmed the judgment entered in this action, on the 17th day of December, 1868, as the same was reduced by stipulation to $12,102\frac{10}{100}$ dollars, and from each and every part of said judgment.

Dated New York, April 6, 1871.

Yours, &c.,

JOHN SHERWOOD,
Atty. for Deft. Matthews.

To MARTIN & SMITH, Esqs.,
Resp'd't's and Plff's Att'ys,
And NATH'L JARVIS, Jr.,
Clerk of Court of Common Pleas,
of the City and County of New York.

At a special term of the court of common pleas for the city & county of New York, held at the county court-house, in the city of New York, on the 27th day of November, 1872.

Present, Hon. J. F. Daly, judge.

NELSON MCSTEA
ag'st
JAMES S. BRANDER, JR., SAMUEL L. CHAMBLISS,
& Edward Matthews.

Edward Matthews, having appealed to the court of appeals from the judgment of the general term of this court, bearing date the
87 31st day of March, 1871, and duly entered in the office of the clerk of this court, on said 31st day of March, 1871, and said court of appeals having affirmed the judgment of the court: Now, on reading and filing the remittitur from the said court of appeals, and on motion of Martin & Smith, attorneys for the plaintiff and respondent, it is ordered that the judgment of the court of appeals be, and the same is hereby, made the judgment of the court, and that Nelson McStea, plaintiff and respondent herein, have execution thereon.

A copy.

NATH'L JARVIS, *Clerk.*

N. Y. common pleas.

NELSON MCSTEA, RESP'D'T,
against
EDWARD MATTHEWS, APP'L'T, & O'RS.

Judgment.—Nov'r 27th, 1872.

On reading and filing the remittitur in this action from the
88 court of appeals this day filed, and forming part of the judgment-roll herein, and the costs and disbursements of the respondent on said appeal having been duly adjusted at the sum of one hundred and twenty-six $\frac{77}{100}$ dollars: Now, on motion of Martin & Smith, attorneys for said respondent, it is adjudged that Nelson McStea, plaintiff and respondent, recover of Edward Matthews, defendant and appellant, the sum of one hundred and twenty-six $\frac{77}{100}$ dollars, being the amount of said costs and disbursements; and that the plaintiff have execution therefor.

NATH'L JARVIS, JR, *Clk.*

89 The United States of America to Nelson McStea, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, on the third Monday of December, one thousand eight hundred and seventy-two, pursuant to a writ of error filed in the office of the clerk of the court of common pleas for the city and county of New York, wherein Edward Matthews, impleaded with James S. Brander, jr., and Samuel L. Chambliss, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Sanford E. Church, chief judge of the court of appeals of the State of New York, this third day of December,
90 in the year of our Lord one thousand eight hundred and seventy-two.

S. E. CHURCH,
Ch. J. Court of Appeals.

(Indorsed:) United States Supreme Court. Edward Matthews, impleaded &c., plaintiff in error, ag't Nelson McStea, defendant in error. Citation. Filed Dec. 7, 1872. John Sherwood, att'y for Edward Matthews, impl'd w. pl'ff in error, 60 Wall st., New York.

91 UNITED STATES OF AMERICA,
State of New York, City and County of New York, ss:

On this seventh day of December, in the year of our Lord one thousand eight hundred and seventy-two, personally appeared Cha's E. Coddington before me, the subscriber, a notary public public for the city and county of New York, and makes oath that he delivered a true copy of the within citation to Aug. F. Smith of Martin & Smith, esq's, attorneys for Nelson McStea, the plaintiff, on the seventh day of December instant.

CHA'S E. CODDINGTON.

Sworn to and subscribed the 7th day of December, A. D. 1872, before me.

[SEAL.] HENRY E. HOWLAND,
Notary Public New York City.

Service of a copy of the within citation is hereby admitted this day. N. Y. Dec. 7, 1872.

MARTIN & SMITH,
Att'ys for Pl'ff in State Courts.
AUG. F. SMITH,
Att'y for Def't in Error in U. S. Sup'e C't.

92 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the court of common pleas for the city and county of New York:

Because, in the record and proceedings, as also in the rendition of the judgment, in an action in which judgment was lately rendered in the court of appeals, being the highest court of appeal in the State of New York in which a determination could be had in said action; and in which action in said court of appeals Nelson McStea was plaintiff and respondent, and Edward Matthews, impleaded with James S. Brander, junior, and Samuel L. Chambliss, was defendant and appellant; and the record of judgment and proceedings in said action have, since the rendition thereof, been remitted by the said court of appeals to the said court of common pleas for the city and county of New York,

93 to be there enforced, where the same now remain of record before you in said court; and wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty or statute of or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; and wherein, as it is said, a manifest error hath happened, to the great damage of the said Edward Matthews, as by his complaint we are informed:

94 We, being willing that error, if any there be, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you that, if judgment be thereupon given, that, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to our justices of the Supreme Court of the United States, together with this writ, so that you may have the same at the city of Washington, on the third Monday of December, in the year of our Lord one thousand eight hundred and seventy-two, in the said Supreme Court, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and custom of the United States ought to be done.

Witness the Honorable Salmon P. Chase, Chief-Justice of the said

65 Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and seventy-two.

KENNETH G. WHITE,
Clerk of Circuit Court U. S.,
for the Southern District of New York.

I allow the above writ of error.

S. E. CHURCH,
Ch. J. Court of Appeals.

JOHN SHERWOOD, *Attorney.*

96 On the within writ of error and the error bond, approved by the chief judge of the court of appeals, I order a stay of proceedings on the executions upon the judgment entered upon the verdict, and the judgments for costs on appeal, in the action mentioned in the within writ of error, if such execution or executions shall have been issued, or a stay of the issuing of one if none have been issued, until judgment shall be rendered on the within writ of error.

December 6th, 1872.

CHA'S P. DALY,
Chief Justice of N. Y. Common Pleas.

97 The answer of the judges of the court of common pleas for the city and county of New York:

The record and proceedings of the plaints whereof mention is within made, with all things touching the same, we certify, under the seal of our said court, to the justices of the Supreme Court of the United States within mentioned, at the day and place within contained, in a certain schedule to this writ annexed, as within we are commanded.

Witness Cha's P. Daly, esq., chief justice of our said court, the 10th day of September, 1872.

[SEAL.] NATH'L JARVIS, JR, *Clk.*

(Indorsed:) U. S. Supreme Court. Edward Matthews, impleaded, &c., plaintiff in error, ag't Nelson McStea, defendant in error. Writ of error and stay of proceedings. John Sherwood, att'y for Edward Matthews, impl'd, &c., pl'ff in error, 60 Wall street, New York. Filed Dec. 7, 1872.

(Indorsement on cover:) No. 617. Edward Matthews, plaintiff in error, vs. Nelson McStea. Remittitur. New York c't of common pleas for the city & county of New York. Filed 27th December, 1872.

Supreme Court of the United States,

No. 108

EDWARD MATTHEWS, IMPLEADED, &C.,

Plaintiff in Error,

vs.

NELSON McSTEA,

Defendant in Error.

In Error to the Court of Appeals of New York.

Brief and Points for Plaintiff in Error.

NEW YORK:
EVENING POST STEAM PRESSES,
41 NASSAU STREET, CORNER OF LIBERTY.
1874.

Evening Post Steam Presses, 41 Nassau Street, cor. Liberty, N. Y.

Supreme Court

OF THE UNITED STATES.

Edward Matthews, Impleaded with James S. Brander, Jr., and Samuel L. Chambliss,
Plaintiff in Error,

vs.

Nelson McStea,
Defendant in Error.

BRIEF FOR THE PLAINTIFF IN ERROR.

STATEMENT.

This writ of error is brought to review a judgment of the Court of Appeals of the State of New York, affirming a judgment of the Court of Common Pleas of the city and county of New York, where the action was commenced.

The action was commenced on the 3d day of March, 1864, by Nelson McStea, a resident of New Orleans,

in the State of Louisiana, against Edward Matthews, a resident of the city of New York, claiming to charge Mr. Matthews (the plaintiff in error) as a copartner in the firm of Brander, Chambliss & Co., of New Orleans, and to recover the amounts of three acceptances and one promissory note made by and in the name of that firm.

The defendant Matthews alone appeared, and he answered that at the time in question, he was a resident of the State of New York and the other parties, residents of Louisiana, and that before the acceptances and promissory note were made, the copartnership was dissolved by the war of the rebellion.

The first of the acceptances, being for the sum of 8,050 dollars and 6 cents, was dated April 23, 1861, and the second and third, together with the promissory note, were dated in January and February, 1862.

The court below held, that Mr. Matthews being a resident of New York, and the others of Louisiana, the copartnership was dissolved by the war prior to the date of the second and third acceptances and of the promissory note, and that the defendant Mr. Matthews was not liable for them by reason of the dissolution of copartnership by the war, but that the copartnership was not dissolved by the war prior to the date of the first acceptance, viz., the 23d day of April, 1861, and as to that acceptance the defendant Matthews was liable as a copartner.

The defendant below, and now, as plaintiff in error, insists that the copartnership was dissolved by the war as early as the date of the proclamation of blockade of April 19, 1861, and therefore he is not liable upon any contract made by the firm after that date.

The question is, then, as to the date of the dissolution of the copartnership by the war.

The record presents this question, the facts having been set forth in the answer.

First.—In an exception by the defendant in the court below to the admission in evidence of the ac-

ceptance in question: That by the act of war between the United States and the Confederate States, that the firm of Brander, Chambliss & Co. was dissolved prior to the making of the acceptance (case, page 25).

Second.—In an exception to the refusal of the judge who tried the cause to give judgment that the complaint be dismissed, on the ground that by the state of war existing in the State of Louisiana the copartnership was dissolved as to the defendant Matthews by the war of the rebellion (page 35, fol. 71), and

Lastly.—By an exception to the refusal of the judge to charge the jury that by the war of the rebellion the copartnership of Brander, Chambliss & Co. of New Orleans was dissolved as to the defendant Matthews, who was a resident and citizen of New York.

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will be disposed of with the hearing on the merits.
The arguments on the part of the plaintiff on that motion are again, for greater convenience, herewith submitted.

The opinion of the General Term of the Court of Common Pleas, New York, is to be found in the case at page 37, and the opinion of the Court of Appeals appears annexed to the argument for the plaintiff in error on the motion to dismiss at page 11.

Assignment of Errors.

The plaintiff in error claims that the court below erred:

First.—In admitting in evidence against him the ac-

in the State of Louisiana, against Edward Matthews, a resident of the city of New York, claiming to charge Mr. Matthews (the plaintiff in error) as a copartner in the firm of Brander, Chambliss & Co., of New Orleans, and to recover the amounts of three acceptances and one promissory note made by and in the name of that firm.

The defendant Matthews alone appeared, and he answered that at the time in question, he was a resident of the State of New York and the other parties, residents of Louisiana, and that before the acceptances and promissory note were made, the copartnership was dissolved by the war of the rebellion.

The first of the acceptances, being for the sum of 8,050 dollars and 6 cents, was dated April 23, 1861, and the second and third, together with the promissory note, were dated in January and February, 1862.

The court below held, that Mr. Matthews being a resident of New York, and the others of Louisiana, the copartnership was dissolved by the war prior to the date of the second and third acceptances and of the promissory note, and that the defendant Mr. Matthews was not liable for them by reason of the dissolution of copartnership by the war, but that the copartnership was not dissolved by the war prior to the date of the first acceptance, viz., the 23d day of April, 1861, and as to that acceptance the defendant Matthews was liable as a copartner.

The defendant below, and now, as plaintiff in error, insists that the copartnership was dissolved by the war as early as the date of the proclamation of blockade of April 19, 1861, and therefore he is not liable upon any contract made by the firm after that date.

The question is, then, as to the date of the dissolution of the copartnership by the war.

The record presents this question, the facts having been set forth in the answer.

First.--In an exception by the defendant in the court below to the admission in evidence of the ac-

ceptance in question: That by the act of war between the United States and the Confederate States, that the firm of Brander, Chambliss & Co. was dissolved prior to the making of the acceptance (case, page 25).

Second.—In an exception to the refusal of the judge who tried the cause to give judgment that the complaint be dismissed, on the ground that by the state of war existing in the State of Louisiana the copartnership was dissolved as to the defendant Matthews by the war of the rebellion (page 35, fol. 71), and

Lastly.—By an exception to the refusal of the judge to charge the jury that by the war of the rebellion the copartnership of Brander, Chambliss & Co. of New Orleans was dissolved as to the defendant Matthews, who was a resident and citizen of New York.

The defendant in error made a motion in this court, on or about the 20th day of February, 1873, that the writ of error be dismissed for want of jurisdiction. Printed arguments were submitted, and the motion was denied ~~being undetermined, it is assumed that the question will be disposed of with the hearing on the merits~~. The arguments on the part of the plaintiff on that motion are again, for greater convenience, herewith submitted.

The opinion of the General Term of the Court of Common Pleas, New York, is to be found in the case at page 37, and the opinion of the Court of Appeals appears annexed to the argument for the plaintiff in error on the motion to dismiss at page 11.

Assignment of Errors.

The plaintiff in error claims that the court below erred:

First.—In admitting in evidence against him the ac-

ceptance in question upon his objection that, by the act of war between the United States and the Confederate States, that the firm of Brander, Chambliss & Co., was dissolved prior to the making of the acceptance, to which ruling the defendant's counsel duly excepted.

Second.—In denying the motion to dismiss the complaint, on the ground that the defendant was not a member of the firm of Brander, Chambliss & Co. at the time of the acceptance of the draft in question, and that the firm had been dissolved by the war of the rebellion, to which decision, denying the motion, the defendant duly excepted.

Third.—In refusing the request to charge the jury, that by the state of war existing in the State of Louisiana, the copartnership of Brander, Chambliss & Co. was dissolved as to the defendant Matthews, who was a resident and citizen of New York, to which refusal exception was duly taken.

In refusing the request to charge the jury that the war of the rebellion rendered notice of the dissolution of the copartnership unnecessary (page 35, fol. 73).

In refusing the request to charge the jury that the defendant was entitled to a verdict (page 36, fol. 73).

In charging the jury to find a verdict for the plaintiff.

To which several refusals and to which charge the defendant duly excepted (page 36, fol. 73).

In fine, the exceptions taken, all point to the question raised in the pleadings, the important and controlling question in the case, whether the copartnership of Brander, Chambliss & Co., composed of two citizens of Louisiana and a citizen of New York, was dissolved before April 23d, 1861, by the war of the rebellion.

Brief and Points for the Plaintiff in Error.

By articles of copartnership made in New Orleans, on the 27th day of March, 1861, an agreement was made by Samuel L. Chambliss and James S. Brander, Jr., both of New Orleans, and Edward Matthews of the city of New York, acting for himself and as attorney for James S. Brander, Sr., then at the island of Nassau, for the formation of a copartnership *in commendam* or limited partnership in which Brander, Sr., should be the special copartner and the others general copartners, for the transaction of the cotton factorage and general commission business in New Orleans, under the firm-name and style of Brander, Chambliss & Co.

The copartnership was to commence on the date of the agreement, March 27th, 1861, and to continue until the first day of July, 1862, unless sooner dissolved, as in the agreement provided (case, pages 20–21).

The business of this firm, contemplated in the articles and actually carried on, was a commercial business, involving large transactions in buying, selling and in shipments of cotton, in dealing in foreign and domestic exchange, and in freights in American and foreign ships (power of attorney, pages 17, 18 and 19; articles of copartnership, pages 20–21; letters of Edward Matthews, pages 22, 23, 24; see also on the question of the commercial character of this copartnership, opinion of the New York Court of Appeals, Bank of New Orleans, 49 New York R., 15 and 16).

The defendant Matthews resided in New York.

1st. In the articles of copartnership he is described as a resident of New York (page 20).

2d. The evidence of Gatenby and Judge Pierrepoint, that he and his family resided in New York in 1861, and before and after that time, is undisputed (pp. 25, 34).

3d. He left New Orleans, April 27, 1861, a month after the copartnership is formed.

The only foundation for the assertion of the defendant in error that he had a residence in New Orleans is a recital in a power of attorney, dated April 26, 1861, made by him on the eve of his departure from New Orleans that he was *of this city*, doubtless a clerical error or error of the draftsman and wholly insufficient to overcome the presumptions arising from the exact descriptions of his residence in the city and State of New York, contained in the articles of copartnership made a month before, which presumption continued until after the dissolution of the firm by war April 19, and after the making of the draft, April 23, 1861.

On the 23d day of April, 1861, some three weeks after the formation of the copartnership at New Orleans, the draft or inland bill of exchange in question was drawn, bearing date on that day, for the sum of 8,050 dollars and 8 cents, on Brander, Chambliss & Co., and accepted by them (fol. 21, p. 9).

On the 27th day of April, 1861, Mr. Matthews left the city of New Orleans for New York and never returned. It may fairly be presumed that his departure was in consequence of the political disturbances which prevented his remaining in Louisiana and induced him to leave the South for New York, where he resided. Before his departure for New York he made a power of attorney to Glendy Burke to act as attorney for the firm. This power bears dates April 26, 1861 (pages 17 and 18, fol. 40). After his arrival in New York he corresponded with the firm in New Orleans and letters are produced, the latest in date being May 21st, 1861 (pages 22, 23, 24).

POINTS.

First.

The copartnership of Brander, Chambliss & Co. of New Orleans was dissolved as to the defendant Matthews, a resident of New York, by the war of the rebellion, and he cannot be held liable on contracts of the firm after the war began.

That the effect of the war of the rebellion was to dissolve a copartnership between citizens of the rebellious States and citizens of the rest of the United States is clearly settled.

The Prize cases, 2 Black, 635.
The William Bagaley, 5 Wall., 377.
Hanger *v.* Abbott, 6 Wall., 535.
The Venice, 2 Wall., 274.
Griswold *v.* Waddington, 15 John., 57 ; 16 Id., 438.
The Bank of New Orleans *v.* Matthews 49 N. Y. R., 12.

That the war began in Louisiana on the 19th day of April, 1861, has been determined ; the day fixed being the date of the proclamation of intended blockade by the President.

The Protector, 12 Wall., 700.

The proclamations of the President bearing date April 15, 1861, calling out troops, and April 19, 1861, establishing the blockade of the ports of seven seceding States, are conclusive evidence that the war existed.

The Prize Cases.

The war was a legal war, and after the date of the last of these proclamations all the consequences which flow from a legal war resulted from the events preceding and from the issue of those proclamations.

The Prize Cases, *supra*.

The Venice, supra.
Hanger *v.* Abbott, *supra.*
Mrs. Alexander's Cotton, 2 Wall., 419.
Swinerton *v.* The Columbia Ins. Co., 37 N. Y. R., 174.
The Ouachita Cotton, 6 Wall., 521.

Commercial intercourse between citizens of the different sections was from that time forth interdicted.

Same Cases.
Also, especially the legal consequences resulting from a state of war—opinion of Nelson, J., in the Prize Cases, p. 687.

Resting upon these determinations of law, there would seem no doubt as to the conclusions to which we must arrive.

But the Court of Appeals of the State of New York have held in effect that by the implied and express permission of the Federal Government, evidenced by the proclamations of the President at the outset of the war of the rebellion (Proclamations of April 15, and April 19, 1861), and by the Act of Congress, July 13, 1861, commercial intercourse between citizens of the insurrectionary States and of the loyal States was permitted and was lawful until the issuing of the President's proclamation of August 16th, 1861, declaring such intercourse unlawful, and that, therefore, a co-partnership existing between citizens of the two sections was not terminated, by reason of the war, until that date.

Second.

The terms of the first proclamation do not admit of the construction that commercial intercourse was to be allowed, but was, on the contrary, of itself evidence

of an intention that commercial intercourse should be interdicted.

The clause in the proclamation relied upon in the opinion of the Court of Appeals of New York is, "I deem it proper to say that the first *service* assigned to the forces hereby called forth will probably be to repossess the forts, places and property which have been seized from the Union, and in every event the utmost care will be observed, consistently with the objects aforesaid, to avoid any devastation, any destruction of or interference with property, or any disturbance of peaceful citizens in any part of the country."

This is in effect a military order, and refers to the conduct and management of the forces called out while in the *service* contemplated. It is substantially saying that these forces are to carry on war as a civilized war. The destruction of or interference with property, or disturbance of peaceful citizens by the forces so called out, will be carefully avoided.

The second proclamation of April 19th, declaring the blockade, in which this language is used, "With a "view to the same purposes before mentioned, and to "the protection of the public peace, and the lives and "property of quiet and orderly citizens, pursuing "their lawful avocations until Congress shall have "assembled and deliberated on the said unlawful pro-"ceedings, or until the same shall have ceased," is claimed further to be evidence of an intention not only, not to prohibit commercial intercourse between the citizens of the different sections, but on the contrary, to have the effect to permit such intercourse.

This proclamation reiterates the language of the first proclamation, and plainly points to the object and intent of the government in preserving the public peace by force. There is no permission or license to carry on commercial intercourse in this act which declared blockade. No such incongruity can be detected in this document as to say that it bears the construction, "while we take from you the very means

by which commercial intercourse is carried on, we permit you to carry on commercial intercourse."

The proclamation of blockade was an effectual declaration of war, its consequences and results were those which follow a general declaration of war—such as to prohibit communication and trading, to make enemies of the citizens of the different sections, and, finally, to close the courts and to arrest the operation of the laws.

See cases above cited.

The blockade of the American coast from Maryland to Mexico was a war measure, too momentous to be treated as a local provision restricting the commerce of certain ports. It was a war measure which, after giving other nations notice, and after visiting upon foreign commerce the penalties of seizure and confiscation of property, it would illy become this government to assert that it was a mere closing of ports, or a measure confined to the collection of the revenues. But if we are to confine the effect of the proclamation of blockade to the "commerce of the ports," how was that commerce affected? Was not the commerce and foreign trade of New Orleans utterly broken up without legal communication with the outer world? The outlet of the Mississippi river was closed, and the only means of communication confined to such internal transportation as was not dependent upon egress to the Gulf of Mexico. The departments of the Government for the collection of the revenue and for the administration of the laws were closed, and the transportation of the mails prohibited. Will any one say that commercial intercourse was not practically interdicted?

Third.

The Act of Congress of July 13th, 1861, declares in the fifth section that when an insurrection exists in any State or States "it may and shall be lawful for "the President by proclamation to declare that the "inhabitants of such State, or any section or part "thereof, where such insurrection exists, are in a state "of insurrection against the United States, and there- "upon all commercial intercourse by and between the "same and the citizens thereof, and the citizens of the "rest of the United States, shall cease and be unlaw- "ful so long as such condition of hostility shall con- "tinue."

It has been insisted in the New York Court of Appeals that this Act of Congress is the first intimation on the part of the government of an intention to prohibit commercial intercourse. We answer that if the proclamation of blockade was legal, it was the act of the government. But the question of its legality can no longer be disputed.

Prize Cases, *supra*.
Act of Congress, Aug. 6, 1861.

The notice of blockade was of itself a notice of prohibition of commercial intercourse.

We insist that in the act of July 13th, 1861, there was no implication that commercial intercourse had not been prohibited by the proclamations of April 15 and April 19.

Congress having assembled on the 4th day of July, previous to the passage of that act, from that time forth the power rested with Congress and not with the President to determine and act upon all questions as to the area of the rebellion, and as to the means of suppressing it. The Act of July 13th was then passed as a general act, not in terms or expressly applicable to any territory or period, but intended more clearly to define the powers of the President, and to confer

on him during the session of Congress the necessary powers to repel the domestic war.

This act is still in force, and would be applicable now or hereafter to any similar conditions. At the time of its passage in July, 1861, it was uncertain what States or parts of States other than those embraced and named in the proclamations might join in the rebellion. There were border States then in doubt; there were parts of States, such as Western Virginia, which might well be excepted from the effect of the proclamations previously made. The original proclamations, moreover, did not embrace States which had joined with the rebellion, such as Tennessee and Arkansas. Power and authority were necessary to be given to the President to issue new proclamations in order to conform the action of the government to the changed condition of affairs. A new proclamation so authorized by Congress would properly declare the effects and results of war, and by its precise terms give more formal notice and warning than those previously issued. That proclamation would properly include the entire area of the rebellion, not only the new States joining the so-called Confederacy, such as Tennessee and Arkansas, but the States which had previously been included in the proclamations of April and May. Congress thus authorized the President to do *during its session* what he had the power to do while Congress was not in session. The Act of July 13th was passed, moreover, not to authorize a declaration of war, but *ex majore cautela*, that the people of the United States might not remain in ignorance of their legal rights and obligations.

The Prize cases, *supra.*
Hanger *v.* Abbott, *supra.*
The United States *v.* Grossmayer, 9 Wall., 74.

The proclamations of April 17 and April 19 and the Act of Congress do not, as we contend, contain, by

implication or otherwise, any permission to trade or any inference that such permission was intended or existed until the proclamation of August.

But permission to trade after war is begun must be expressly given by the government. Commercial intercourse is unlawful unless directly and expressly sanctioned. It cannot be implied in the construction given to the proclamations of the Executive and the acts of Congress.

The Prize Cases, *supra.*
U. S. *v.* Lane, 8 Wall, 185.
Coppell *v.* Hall, 7 Wall., 542.

Fourth.

But the copartnership of Brander, Chambliss & Co., of New Orleans, was dissolved, even if a limited intercourse was permitted. This was a commercial copartnership, as we have before insisted. It is not disputed that the ports of the State of Louisiana were under blockade previous to the date of the contract in question, nor that the courts were closed—the Statute of Limitations was suspended *because* the courts were closed. The legality of commerce and the mutual use of courts of justice must be inseparable.

Griswold *v.* Waddington, 16 Johns., 468.

The incapacity to sue, demonstrates that the contract is unlawful, and the partnership contract cannot be enforced. Personal intercourse restricted or forbidden, communications by mail or other legal means interrupted, the liability to seizure and confiscation of the property of the firm at sea or on land, but above all, the impossibility of appeal to the laws through the

courts of justice, are elements which must work a dissolution. A copartnership between enemies is impossible.

Griswold *v.* Waddington, 15 Johns., 57, 16 *id.*, 438.
Prize Cases.
The Wm. Bagaley.
The Venice.
Mrs. Alexander's Cotton.

Practically, too, the blockade of the port of New Orleans terminated this copartnership, for their means for the shipment and export of cotton were destroyed.

Fifth.

I.—All contracts between citizens of the different States being absolutely void after April 19, 1861, the plaintiff's argument, that the defendant is estopped by his acts, such as the power of attorney, and the letters written by him after that date, from setting up the defense of dissolution of copartnership, falls to the ground.

Contracts between enemies are utterly void. The defense is allowed, not for the sake of a defendant, but for the law itself. The principal of non-intercourse and prohibition of trading is founded on national necessity, and for the protection of the government. The very object and intent of this important principle would be defeated if it could not be enforced between parties.

If the defendant had executed a solemn instrument under seal, declaring that he would remain a copartner in spite of the war and in spite of the law, it would have had no effect whatever; it would have been absolutely void.

This question of the right of the defendant to set up

the defense, is disposed of in the opinion of Chancellor Kent, in Griswold *v.* Waddington, pp. 484, &c., and especially in Coppell *v.* Hall, 7 Wallace, 558, where it is said, in relation to an alleged waiver of the illegality of a contract made during the war :

"The instructions given to the jury, that if the contract were illegal, the illegality had been waived by the reconventional demand of the defendants, was founded upon a misconception of the law. In such cases there can be no waiver ; the defense is allowed, not for the sake of the defendant, but of the law itself. The principle is indispensable to the purity of its administration. It will not enforce what it has forbidden and denounced. The maxim, *ex dolo malo non oritur actio*, is limited by no such qualification ; the proposition to the contrary strikes us as hardly worthy of serious refutation. Whenever the illegality appears, whether the evidence comes from one side or the other, the disclosure is fatal to the case. No consent of the defendant can neutralize its effect. A stipulation in the most solemn form to waive the objection, would be tainted with the vice of the original contract, and void for the same reasons. Wherever the contamination reaches, it destroys. The principle to be extracted from all the cases is, that the law will not lend its support to a claim founded upon its violation."

JOHN SHERWOOD,
WILLIAM M. EVARTS,
For the Plaintiff in Error.

Supreme Court of the United States

No. 617.

EDWARD MATTHEWS, IMPLEADED, &C.,

Plaintiff in Error,

vs.

NELSON McSTEA,

Defendant in Error.

In Error to the Court of Appeals of New York.

ARGUMENT FOR PLAINTIFF IN ERROR,

On Motion to Dismiss.

NEW YORK:

EVENING POST STEAM PRESSES, 41 NASSAU STREET, COR. LIBERTY.

1873.

Evening Post Steam Presses, 41 Nassau Street, cor. Liberty, N. Y.

Supreme Court

OF THE UNITED STATES.

Edward Matthews, impleaded with James S. Brander, Jr., and Samuel L. Chambliss,
Plaintiff in Error,

vs.

Nelson McStea,
Defendant in Error.

Brief for the Plaintiff in Error in Answer to the Motion to Dismiss the Writ of Error.

This writ of error is brought to review a judgment of the Court of Appeals of the State of New York, the highest Court of Appeal in that State.

The record, according to the practice of New York, was remitted by the Court of Appeals to the Court of Common Pleas for the city and county of New York, where the action originated, in order that the judgment of the Court of Appeals might be carried into effect.

The question in the case was whether a copartnership in Louisiana, composed of Brander & Chambliss, citizens of Louisiana, and Matthews, a citizen of New York, was dissolved by the war of the rebellion as early as April 23, 1861.

The plaintiff, in the State Court, claimed that Matthews, the New York partner, was liable upon a draft dated April 23, 1861, at New Orleans, which was accepted in the name of the firm of Brander, Chambliss & Co.

The defendant insisted that the copartnership was dissolved by the war as early as the date of the proclamation of blockade of April 19, 1861, and therefore that he is not liable on a contract made by the firm after that date.

The articles of copartnership bear date March 27, 1861, and Edward Matthews is therein described as a resident of the city and State of New York, and the other copartners as of the city of New Orleans (Exhibit B, page 20).

April 15th, 1861.—President's proclamation calling out troops.

April 19th, 1861.—President's proclamation of blockade.

April 23d, 1861.—Draft, dated New Orleans, on that day accepted by the firm.

April 27th, 1861.—Mr. Matthews left New Orleans for New York, and has not been in Louisiana since that time.

First Point.

The question whether war existed in Louisiana against the Government of the United States, so as to dissolve the copartnership on or before the 23d of April, 1861, is a Federal question.

I. This question can only be determined by the consideration and construction of the Constitution of the United States, of the statutes of July 13th, 1861, and August 6th, 1861, and of the proclamations of the President of April 15th, April 19th, and April 27th, and other acts of the President in prosecuting the war under the authority of the United States.

The plaintiff in error claims exemption and immunity from liability as a copartner, by reason of the acts of the executive exercised under the constitution and the laws.

By the Judiciary Act, jurisdiction is given to this Court when immunity is claimed by either party, under the constitution or any statute of, or authority exercised under, the United States.

The argument of the defendant in error briefly disposes of an important part of this provision, viz., when an immunity is claimed under any authority exercised under the United States, by the assertion that the plaintiff in error exercised no authority under the United States.

We respectfully insist that this provision of the statute will not admit of a construction so narrow as to say that the immunity must be claimed by the party who himself holds a commission, or himself exercises an authority under the government.

It means an immunity claimed by any one subjected to any authority exercised under the government.

The slave suing for his freedom under the Proclamation of Emancipation may claim immunity under that proclamation, as under an authority exercised by the President.

So all citizens of the United States were subject to the authority exercised by the executive in issuing the proclamation calling out troops in April, 1861; and if the rights of citizens were dependent upon that exercise of authority, is it not manifest that it is a case of an immunity claimed under such authority.

The Statute refers to an authority exercised under the United States by any one having authority, and the immunity to any one subjected to that authority.

Therefore we insist that in this case jurisdiction is con-

ferred when we show that the plaintiff in error had claimed an immunity, such as an exemption from liability as a copartner, under any authority exercised under the United States, such as the early proclamations of the President, which had the effect of a declaration of war.

It is unnecessary to show, for the brief of the defendant admits, that the plaintiff in error has from the beginning claimed that he was not liable as a copartner in consequence of the dissolution of the copartnership by the war. He has claimed immunity from liability under the authority exercised by the President in issuing the proclamations and doing the other acts which resulted in the war.

II.—Again, under that clause of the Judiciary Act, giving jurisdiction when the party claimed in the State Court *any title, right, privilege or immunity under the Constitution, or any treaty or statute of the United States.*

The plaintiff in error did claim in the State Court an immunity under the statutes of the United States, which were construed and were necessary to be construed in order to determine, when the war began, whether commercial intercourse was permitted subsequent to April 19th, 1861, and whether a partnership was dissolved on that day.

The Acts of Congress of July 13, 1861, and August 6, 1861, approved the proclamations of the President of April, 1861.

The proclamations of April are then to be construed with the statutes sanctioning them. They are to be considered together, and the argument and claim of the defendant in the State Court was, that under these statutes the proclamations, which were in effect declarations of war, or at least an acceptance of the challenge to war, were the legal evidence of the existence of the war, and of themselves such a suspension of commercial intercourse as to dissolve a copartnership.

To speak more accurately, the Plaintiff in Error insisted, and insists, that under the Act of August 6, 1861, the Proclamations of the President, of April 15, 1861, and April 19, 1861, were *approved, legalized and made valid.*

[redacted] proclamations [redacted]

It seems clear, then, that he claims an immunity under that statute, and the decision in the State Court is against that immunity.

The Act of July 13, 1861, is also to be considered as approving of the President's acts in April.

The defendant in error makes a point that no other Act of Congress than that of July 13, 1861, was referred to in the State Court.

It is not necessary to prove an Act of Congress as a part of the evidence on the trial of a cause, and it was not necessary in this case to have proved the Act of August 6, 1861. All the acts were necessarily fully discussed on the argument.

Stewart *v.* Kahn, 11 Wall, 503.

III.—In the decision of this case, there was drawn in question the construction of clauses of the Constitution.

The clauses giving to Congress the power to declare war, and defining the authority and powers of the executive, were necessarily considered, in order to determine whether the President, in the absence of Congress, could initiate war or repel war brought on by foreign powers or enemies at home.

The questions actually and necessarily determined were:

1. Whether the war of the rebellion in the beginning was a war carrying with it the consequences of international war.

2. Whether by the war, beginning as it did, commercial intercourse was, in the month of April, 1861, suspended.

Will any one say that these were not Federal questions requiring the most enlarged and thoughtful examination of the Constitution of the United States.

The Prize Case, 2 Black.
The Protector, 12 Wall, 700.
The United States *v.* Lane, 8 Wall, 195.

Second Point.

The argument of the defendant in error, under the second point, is, that the State Court might have placed their decision upon some ground not involving a Federal question.

As we understand, the position assumed by the defendant in error is, that Mr. Matthews could not set up the defence of the dissolution of the firm by war, because he was in New Orleans at the time the contract was made, and is said to have approved the contract after the 19th of April.

We answer to this argument:

1.—That the State Court could not give a judgment against the defendant on this ground, for the principle of *estoppel* does not apply to contracts made void or copartnerships dissolved by war.

Griswold *vs.* Waddington, 16 Johns., 484, &c.
Coppall *vs.* Hall, 7 Wall., 558.

2. If judgment were given by the State Court on such a ground, it could only have been given on consideration and determination of the Federal questions which are involved in the case at every point, such as the meaning and effect of the proclamations and the statutes approving them.

Hence the case in 100 Mass. R., cited by the defendant in error, is founded on a consideration of the character of the war as determined by the acts of the Government.

3. But the record shows a mistake on the part of the defendant in error in making the assertion that it was proved that the bill of exchange was made by authority of Mr. Matthews.

The bill of exchange being produced to Glendy Burke, the principal witness for the plaintiff in the State Court, he is asked in whose handwriting is the signature of the acceptance of Brander, Chambliss & Co. (pp. 7 and 8). He answers, it is in the handwriting of James S. Brander, Jr., one of the members of the firm (p. 15).

On cross-examination, he is asked to state the origin and history of the bill (p. 10). He answers in these words: The bill of exchange No. 1, for $8,030.06, was made under the personal supervision of Matthews; the signature of the firm of Brander, Chambliss & Co. being in his handwriting (p. 16).

Now, the witness having sworn, on his direct-examination, that the signature was in the handwriting of Mr. Brander, Jr., we insist that the testimony of the witness, that it was done under the personal supervision of the defendant, is worthless, because the reason that the witness gives for saying that it was under the defendant's supervision is proved by himself not to exist.

Nor does the fact that the defendant was in New Orleans affect the defence; for, being a citizen of New York, he left for New York within a few days after the war began.

His rights were not affected by reason of his remaining in New Orleans for a period of eight days after the war began.

The Peterhoff, 5 Wall., 28.

If, on this motion, the Court is to examine the evidence, there can be no question as to the residence of Mr. Matthews.

1st. In the articles of copartnership he is described as a resident of New York (p. 20).

2d. The evidence of Gatenby and Judge Pierrepont, that he and his family resided in New York in 1861, and before and after that time, is undisputed (pp. 25, 34).

3d. He left New Orleans April 27, 1861, a month after the copartnership is formed.

The only foundation for the assertion in the argument of the defendant in error is a recital in a power of attorney, dated April 26th, 1861, made by the defendant in the State Court on the eve of his departure from New

Second Point.

The argument of the defendant in error, under the second point, is, that the State Court might have placed their decision upon some ground not involving a Federal question.

As we understand, the position assumed by the defendant in error is, that Mr. Matthews could not set up the defence of the dissolution of the firm by war, because he was in New Orleans at the time the contract was made, and is said to have approved the contract after the 19th of April.

We answer to this argument:

1.—That the State Court could not give a judgment against the defendant on this ground, for the principle of *estoppel* does not apply to contracts made void or copartnerships dissolved by war.

Griswold *vs.* Waddington, 16 Johns., 484, &c.
Coppall *vs.* Hall, 7 Wall., 558.

2. If judgment were given by the State Court on such a ground, it could only have been given on consideration and determination of the Federal questions which are involved in the case at every point, such as the meaning and effect of the proclamations and the statutes approving them.

Hence the case in 100 Mass. R., cited by the defendant in error, is founded on a consideration of the character of the war as determined by the acts of the Government.

3. But the record shows a mistake on the part of the defendant in error in making the assertion that it was proved that the bill of exchange was made by authority of Mr. Matthews.

The bill of exchange being produced to Glendy Burke, the principal witness for the plaintiff in the State Court, he is asked in whose handwriting is the signature of the acceptance of Brander, Chambliss & Co. (pp. 7 and 8). He answers, it is in the handwriting of James S. Brander, Jr., one of the members of the firm (p. 15).

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The only foundation for the assertion in the argument of the defendant in error is a recital in a power of attorney, dated April 26th, 1861, made by the defendant in the State Court on the eve of his departure from New

Orleans, that he was *of this city*, doubtless a clerical error or error of the draftsman, and wholly insufficient to overcome the presumptions arising from the exact descriptions of his residence in the city and State of New York, contained in the articles of copartnership made a month before, which presumption continued until after the dissolution of the firm by war, April 19th, and the making of the draft, April 23d, 1861.

The writ of error is not to be dismissed on motion when the defendant in error must resort to so critical an examination of evidence to establish a possible ground on which the State Court might have determined the case, independent of the Federal questions, but we respectfully insist that there is no reason for the assertion that the State Court could have given a judgment for the plaintiff in that Court on any other grounds than the Federal questions which were involved.

Third Point.

Upon the whole, then, the argument upon the motion to dismiss the writ of error may be finally stated thus :

I. There is no doubt that the statutory jurisdiction of this Court to correct errors in the final judgments of the State Courts was intended to embrace, and does embrace, every case in which a right or a protection asserted under the Federal law (in its largest sense of Constitution, Treaty Statute, or authority of or under the General Government) has been passed upon by the State Court *adversely* to the right or protection claimed under Federal law.

II. There is no doubt that WAR between nations dissolves a partnership, upon grounds of public interest and policy, irrespective of, and in spite of, all contracts and intentions to the contrary of the partners.

III. Now, the argument for the defendant in error, both in the Court below, and on this motion to dismiss, is simply that, under the Constitution of the United States, this consequence of *war* does not take place to dissolve the partnership in question, except after a certain date, and by operation of certain statutes and Executive proclamations, which introduce that effect.

This proposition, vital to the case of the defendant in error, makes the contention between the parties one of Federal law. If the defendant in error shall shall maintain his view, in the ultimate judgment of this Court it will be by virtue of the Constitution and statutes of the United States, and not otherwise.

IV. On the other hand, the plaintiff in error contended, in the Court below, and contends here, that the effect of *war* under the Constitution and Laws of the United States, and the Executive authority exercised thereunder, had the effect to dissolve this partnership at and before the partnership contract, which has been, nevertheless, upheld in the final judgment of the State Court.

It thus appears that the whole area of argument, on the merits of the case, is necessarily confined to the disputation of what, and of what date, are the consequences of the civil war *under the Constitution of the United States, and under Legislative and Executive action by authority of the same*, in dissolving the partnership in question.

V. The effort of the counsel of the defendant in error, to intrude, or imagine, a ground for disposing of the controversy between these parties, *outside of this question of Federal Law*, must fail for two reasons.

(*a.*) There is no support in the record for the judgment against the defendant below, except by denying the effect of the civil war upon the partnership contract in question, which the defendant below asserted.

(*b.*) But, whether the special circumstances, which the defendant in error relies upon, do or do not intercept or

defeat the consequences which the plaintiff in error attributes to the civil war, is but a part of the question of Federal Law, on which the whole controversy turns. It is vain to say, that, up to a certain point, the question of the effect of the civil war upon this contract is a Federal question, and beyond that point a question of general jurisprudence. The question debatable between the parties, is one and indivisible, so far as the present point of jurisdiction is concerned, and is wholly of Federal Law.

Fourth Point.

The motion to dismiss ought to be denied.

New York, February, 1873.

JOHN SHERWOOD,
WM. M. EVARTS,
Of Counsel for the
Plaintiff in Error.

Court of Appeals.

NELSON MCSTEA,
Respondent,

vs.

EDWARD MATTHEWS, impleaded, &c.,
Appellant.

} Opinion.

JOHN SHERWOOD,
for Appll't.
AUG. F. SMITH,
for Resp't.

CHURCH, Ch. J.—The general question in the case is whether the defendant Matthews is liable as a member of the firm of Brander, Chambliss & Co., upon the acceptance by that firm, on the 23d of April, 1861, of the draft of $8,050.06. The other claims for which the action was brought were properly excluded by the General Term. If not dissolved by the war of the rebellion, there can be no serious question of the existence of the firm at that time, and of the liability of the defendant as a member of it. The consent of the senior, Brander, to become a party to the articles of association as a partner in commendam was not necessary to the liability of the other members

to third persons dealing with them, while carrying on the business in the name of the firm. The defendant Matthews was in New Orleans at the time the draft was accepted, engaged in superintending and managing the business in the name of the firm, and would not be permitted to urge against his own acts the non-existence of the firm by reason of a want of consent on the part of one of its intended members, although such consent was by the articles necessary to the existence of the firm.

The important point involved in the case is, whether the partnership had at that time been dissolved by the existence of the war of the rebellion.

This involves the question whether war existed at that time in the State of Louisiana against the Government of the United States so as to render unlawful all commercial intercourse between the citizens of that State and the citizens of other portions of the country.

The Court below placed the decision against the defendant upon its authority of the dissenting opinion of Nelson, J., in the *Prize Cases*, 2 *Black*, 635, which maintained in substance that under our constitution and theory of government, the insurrection could not be treated as a war with its legal consequences until Congress, the war-making power had declared or recognized its existence, and this was not done until the passage of the Act of Congress on the 13th of July, 1861; the majority of the Court held that war did exist as early as the first capture which was May 17th, 1861, that the firing upon Sumter, the ordinance of secession of various States, and hostile preparations on the part of the insurgents, together with the action of the President, representing the Government, in measures to meet these warlike demonstrations, evinced by his proclamation of April 15th, calling out the militia, and the proclamations of blockade of April 19th and 27th, were conclusive evidence that war existed and that the rights and *status* of the citizens were affected by such war, and that the capture of a vessel owned by citizens of one of the insurgent States was lawful upon the ground that such owners were public enemies. Without assuming to determine between the soundness of the views contained in the respective opinions,

it appears to me proper that upon a question of this character, our decision should, if possible, harmonize with those of the Federal Courts, and we must therefore regard the authoritative decision of the Court, rather than the dissenting opinion, even though, as an original question, we should concur with the latter.

I cannot, therefore, adopt the grounds upon which the General Term placed its decision. In the late case of the *Protector*, 12 *Wall.*, 700, the same Court in determining what space of time must be excepted from the Statute of Limitations, in bringing an appeal, by the war of the rebellion, held that such suspension commenced on the 19th day of April, 1861, the date of the first proclamation of intended blockade. Whilst these and other kindred cases do hold that war existed as early as the 23d day of April, 1861, and that certain legal consequences resulted therefrom, they do not cover the precise question involved in this case, and that is, whether at that date all commercial intercourse was unlawful by reason of the existence of the war.

It is conceded that acccording to the law of nations and the common law, one of the consequences of war is the interdiction of all commercial intercourse between the subjects of the two countries, including the dissolution of all partnerships, 1 *Kent's Com.*, 66; *Griswold* v. *Waddington*, 16 *J. R.*, 438; *The William Bagaley*, 5 *Wall*, 377.

The reason of this rule is too obvious to require comment. A state of war puts all the members of the two nations in hostility to each other, and pacific trading and intercourse are inconsistent with that condition; but a more important reason is, that "It would counteract the operations of war "and throw obstacles in the way of the public efforts, and "tend to disorder, imbecility and treason," 1 *Kent's Com.*, 74. It is equally well settled that this rule may be modified by the sovereign power. Trading may be permitted by any government engaged in war. Every country settles its own policy in this respect, and determines for itself whether it is most for its interest to allow commercial intercourse or not, *U. S.* v. *Lane*, 8 *Wall*, 195. The right of each state to permit unrestricted commercial intercourse or partial licensed trading in

specific cases is apparent upon general principles and recognized in all the authorities, 1 *Kent's Com.*, 74. It is pertinent, therefore, to enquire whether such intercourse was permitted by the government, and if so, up to what period. *The Prize Cases* (*supra*) recognize the acts of the President prior to the assembling of Congress as the acts of the government, having equal effect upon this question as if authorized by Congress.

The first proclamation bears date April 15th, 1861, prior to which time several of the States had passed ordinances of secession, several of the forts and some public property had been seized, and Fort Sumter had been attacked. This proclamation, after reciting that the execution of the laws of the United States were obstructed by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, made a call for militia to the number of seventy-five thousand men, and contains this clause, "I deem it proper to "say that the first service assigned to the forces hereby called "forth, will probably be to repossess the forts, places and "property which have been siezed from the Union, and in "every event the utmost care will be observed consistently "with the objects aforesaid, to avoid any devastation, *any* "*destruction of or interference with property, or any disturbance* "*with peaceful citizens in any part of the country.*"

The terms of this proclamation repel the idea of prohibiting or restricting free business intercourse between citizens of different sections of the country. On the contrary, it pledges protection to property and the lawful pursuits of peaceful citizens. It seeks only to repossess the property which had been seized, and put down the unlawful combination to resist the laws.

The next is a proclamation of intended blockade, bearing date April 19, 1861. The President, in this proclamation, after reciting that an insurrection had broken out in several States, and that a combination of persons threatened to grant pretended letters of marque and reprisal, proceeds to say that "with a view to the same purposes before mentioned, and to "the protection of the public peace, and the lives and prop-"erty of quiet and orderly citizens, pursuing their lawful avo-

"cations until Congress shall have assembled and deliberated "on the said unlawful proceedings, or until the same shall have "ceased," he deems it advisable to set on foot a blockade of the ports of the States in which the insurrection existed.

Upon the authority of the *Prize Cases*, this was an act of war on the part of the government, and justifiable as a war measure, based upon the existence of a state of war.

But, so far as it operated as a restriction upon trade, it was confined to the commerce of the ports, and ostensibly in preventing the fitting out of vessels to cruise under pretended letters of marque and reprisal, and it expressly assumed to protect the lives and property of quiet and orderly citizens, pursuing their lawful avocations, "*until Congress shall have assembled and deliberated.*"

Nothing is plainer to my mind than the intention of this proclamation to avoid any interference with the business relations of the citizens of the country, except so far as the blockade would have that effect, until the meeting of Congress.

It seems incongruous to hold that a proclamation which expressly declares protection to citizens in their lawful avocations should have the legal effect of invalidating all business transactions.

The next material act of the government bearing upon this question was the Act of Congress of July 13th, 1861, the fifth section of which declares that in a certain specified contingency "it may and shall be lawful for the President, by procla- "mation, to declare that the inhabitants of such States, or any "section or part thereof, where such insurrection exists, are in "a state of insurrection against the United States, *and there-* "*upon*, all commercial intercourse between the same and the "citizens of the rest of the United States shall cease and be "unlawful, so long as such hostility shall continue."

This was the first intimation on the part of the government of an intention to prohibit commercial intercourse, while, as we have seen, every previous expression repelled such intention. The fair construction of this act is to regard it both as an admission of the lawfulness of commercial intercourse up to that time, and a permission to continue it until the President should issue the proclamation.

It is urged that this act provided merely for a warning or notification to the people that war existed, so that they might know and protect their rights, but this view is inconsistent with the terms of the act. It authorizes an act to be done, the effect of which, if done, is declared to be to prohibit commercial intercourse from the time the act is done.

It does not purport to prohibit such intercourse, nor to declare a state of war, the legal consequences of which would be to prohibit it, but in substance it authorizes the President to prohibit it.

The language of the act is utterly inconsistent with the claim that such intercourse was then, or had been unlawful. In pursuance of this act, the President, on the 16th day of August, 1861, issued his proclamation, declaring certain States in a state of insurrection, and that commercial intercourse with the citizens of other States was unlawful. From that period such intercourse became unlawful, and up to that period, by the implied and express permission of the Government it was lawful. If the war had ceased on the 15th day of August, 1861, and the proclamation of the 16th had never been issued, can there be a doubt that the ordinary business relations of the citizens of the respective sections of the Union would been been unaffected.

It may well be that the citizens of the insurrectionary States should be regarded as public enemies for the purpose of enforcing the blockade, and that where the Courts were interfered with so as practically to prevent an appeal, the running of the Statute of Limitations should be suspended, and that these should be regarded as consequences of an existing state of war, but they are not necessarily inconsistent with the continuance of ordinary business relations, and certainly not with the right of the Government to prevent such continuance. The language used by the Government is capable of no other construction than an intention to permit business intercourse; such must have been the general understanding of the people, and good faith demands that it be maintained (*Woods* vs. *Wiler*, 43 *N. Y.*, 165). The long and sanguinary contest which followed may reflect light upon the nature and magnitude of the preparations which were then made or contemplated to resist the Government, but cannot change the legal rights of citizens as they existed, by the acts of the Government at that time.

That the intention of the Government was in accordance with the views above expressed, is confirmed by a recurrence to the circumstances attending the breaking out of the rebellion, and these circumstances will also serve to illustrate a distinction which, I think, exists between an insurrection and a war with a foreign nation, as it respects the question under consideration.

There was great doubt both in official circles and among the people whether the insurrection would ever reach the magnitude of a war, and it was predicted by prominent officers of the Government, looking probably at efforts of conciliation as well as effective force to terminate it, that it would terminate within a specified number of days.

Impressed with this belief, or with doubts whether it might not be true, and hoping that it might, and considering the extensive intimate business relations existing between the citizens of the insurrectionary States and the citizens of other portions of the country, and the great injury which would be inflicted upon both classes by a sudden and unexpected interruption of those relations, the Government was highly commendable in endeavoring to prevent such interruption, until the safety and integrity of the country seemed to demand it. Whilst vigorously resisting the aggressions of the insurgents by the use of ordinary war measures, it wisely postponed to the latest practicable day one of the most serious consequences of a state of war, the unqualified interruption of commercial intercourse. The same legal consequences result from a civil as a foreign war.

In either, the Government has the right to modify and restrict these consequences, but as it respects business relations between citizens of the same country existing upon the breaking out of an insurrection, there is much stronger reason on the part of the sovereign powers to preserve them than in case of a foreign war, because if the insurrection is suppressed, the Government has an equal interest in the prosperity of the insurgents, as in the legal portion of its citizens, and an interruption of those relations are equally injurious to both.

In cases of insurrection, the Government possesses both belligerent and sovereign rights, and can exercise both or

either, partially or wholly (100 *Mass.*, 56). In the late civil war the Government hesitated to accept a state of war, and when it did, it preserved as long as possible the business interests of the people.

This is manifest from the various proclamations of the President, and especially from the Act of Congress of the 13th of July, 1861. It follows that when this draft was accepted, commercial intercourse was lawful by the permission of the Government, and that the defendant is liable thereon.

It may be questioned whether the defendant should not, as to this draft, be regarded as a citizen of New Orleans, although his legal residence was in New York; yet he had entered into this copartnership some time previously, and at that time was personally superintending the business. That was his business residence, and, for aught that appears, he then intended to remain. But it is unnecessary to decide this point.

Judgment affirmed.

H. E. SICKELS,
Reporter for C.

"Church, Chief J., reads for affirmance, Allen, Grover, Peckham, Folger and Rapallo, JJ., concur."

H. E. SICKELS,
Reporter for C.

U. S. Supreme Court.

No. 108.

NELSON McSTEA, Defendant in Error,

ads.

EDWARD MATTHEWS, impleaded with
JAMES S. BRANDER, Jr., and
SAMUEL L. CHAMBLISS,
Plaintiff in Error.

Brief, &c., for Defendant in Error.

New-York:
JOHN W. AMERMAN, LAW PRINTER,
No. 47 Cedar Street.
1874.

U. S. Supreme Court.

NELSON MCSTEA, Defendant in Error, *ads.* EDWARD MATTHEWS, impleaded with JAMES S. BRANDER, Jr., and SAMUEL L. CHAMBLISS, Plaintiff in Error.	*No.* 108. *Brief, &c., for Defendant in Error.*

AN ABSTRACT OR STATEMENT OF THE CASE.

The complaint states four causes of action; but the only one now before the court is the first.

The first is against the defendants, members of the firm of Brander, Chambliss & Co., as acceptors of a draft dated April 23, 1861, for the sum of $8,050 06, and drawn at twelve months.

Complaint, page 3, of Record.

The defendant, Matthews, alone appeared and answered, and denied the partnership of the defendants, saying that a partnership was agreed upon, provided James S. Brander, Sr., assented, but that he refused, and that the partnership was never formed.

He further answered, that Louisiana seceded on April 15, 1861; that war ensued, and that New-Or-

leans was occupied by the enemy till about March 30, 1862. That the plaintiff and the other parties to the drafts and note were residents of New-Orleans, and enemies of the United States.

He further answered, that the draft for $8,050 06 was accepted for the accommodation of Walker, Cheatham & Co., the drawers, without consideration, and was by them transferred to McStea, Value & Co., the payees, for an antecedent debt due to them by the drawers.

Answer, page 5.

The trial took place before the Hon. Charles P. Daly and a jury, in March, 1867. (Page 7.)

Upon the trial the deposition of the plaintiff was read, by which he testified that the acceptance now in question was transferred and delivered to the payees, McStea, Value & Co., on or about the 23d of April, 1861, which was the day of its date.

21st Cross, page 13.

The witness, Burke, in answer to the 21st cross-interrogatory, says the same.

See 21st Cross-Inter., p. 12.
Answer thereto, p. 17.

The answer avers that the draft was accepted for the accommodation of the drawers, and was given by them to McStea, Value & Co., of which firm the plaintiff was a member, as collateral security for a precedent debt. This is an averment of good title in the plaintiff.

Record, page 5.
See Ev. McStea, answer to 16th int'y, page 12.

Although the defendant, Matthews, did not personally write the acceptance, the proof is conclusive that he was at that time in New-Orleans.

The witness, Burke, said: "I was connected with the said firm in the capacity of chief clerk, from its formation, on the 27th of March, 1861, to the first day of July, 1862."

4th Answer, p. 14.

"I know that Edward Matthews, the defendant, took an active part in the formation of the partnership, and in the management of its business afterwards; that he remained a month in New-Orleans after its formation, when he daily attended to its business."

6th Answer, p. 14.

He then proved that the handwriting of the acceptance was that of James S. Brander, Jr.

8th Answer, p. 15.

In answer to the first cross, he testified: "*the bill of exchange, No. 1, for* $8,050.06, *was made and accepted under the personal supervision of Matthews, the defendant.*"

1st Cross, p. 16.

"The consideration for Nos. 1, 2 and 3, was the commission of 2½ per cent. on the amount of each received by Brander, Chambliss & Co. for their acceptances from the respective drawers."

3d Cross, p. 16.

The Articles of Partnership were signed by Matthews, in New-Orleans, before a notary, on March 27, 1861.

Exhibit B., pp. 20, 21.

A power of attorney to Burke was signed by Matthews, in New-Orleans, before a notary, on April 26, 1861, three days after the acceptance in question was made.

Exhibit A., pp. 17 to 19.

It being thus proved that Matthews was in New-Orleans when the draft was accepted, it will be observed, from the same testimony, that Matthews was, at this time, daily attending to the business of the firm.

Page 14.

That the draft in question was accepted under his personal supervision.

Page 16.

That he being in New-Orleans, and so attending to the business generally, and to this in particular, his firm received, as a consideration for this acceptance, 2½ per cent.

Page 16.

And with reference to the position of Matthews, as the controlling power of the firm, and the improbability of any acceptance, such as this was, being made without his knowledge and approval, he being on the spot, let it be observed, that Matthews alone represents the firm in the execution of the power of attorney to Burke, above stated, and this, although James S. Brander, Jr., was, doubtless, in New-Orleans.

See pages 17 to 19.

See also the letter to Burke, of May 30th, 1861, in which Matthews declares himself "the head of the house," and shows the position therein of Brander, Jr., and Chambliss.

Pages 22, 23.

It would not be too much to claim, *upon the evidence*, that Matthews was, for the purposes of this suit, a resident of New-Orleans in April, 1861.

1. He was there and in business there.

2. He is described in his power of attorney, executed in New-Orleans, to Burke, as "of this city."

P. 18.

The witness, Gatenby, called for the defence to prove his residence, says nothing necessarily inconsistent with an intention of Matthews, in April, 1861, to continue to reside in New-Orleans.

P. 25.

The same thing may be said of the evidence of Pierrepont.

P. 34.

But whether upon the evidence it may or may not be claimed that Matthews was a resident of New-Orleans, there is nothing in the record to show that the parties to this transaction, who dealt with him in New-Orleans, as a member of the New-Orleans house of Brander, Chambliss & Co., and took the acceptance in question, for which they paid a commission —there is nothing to show that the parties had any reason to believe that Matthews, with whom they were dealing, was other than he seemed to be, namely, a resident of New-Orleans, where he was then conducting the business of his firm.

It should further be stated, that Matthews went to New-Orleans before the earliest proclamation of the President, the articles of partnership were signed there by him on the 27th of March, 1861, and he continued there daily attending to the business of his firm, until after the acceptance in question was given.

Ev. of Burke, page 14.
Ex. B., page 20.

BRIEF OF ARGUMENT.

Point I.

No serious question was presented in respect to the partnership of the defendants, and the liability of the defendant, Matthews, as a partner.

See Burke's evidence, pages 14 and 16.
Ex. A., pages 17 to 19.
Also, the letters, pages 22 to 24.

Whether James S. Brander, Sr., did or did not approve of the proposed partnership, is wholly immaterial, in view of the fact that the general partners went on with the business.

2 *Greenleaf's Evidence*, § 479.

Point II.

The defence of Matthews, that the contract made under his own supervision was void because of the war, is one of those defences which are entitled to just that consideration which the proofs and the law compel the court to give them, and to no more.

Point III.

Upon the undisputed facts of this case, the rebellion could have no effect upon the contract now in question.

When the acceptance was made, Matthews was in New-Orleans, daily attending to the business of his

firm ; his firm received for their acceptance a commission of 2½ per cent., and it was proved that "the bill of exchange for $8,050 06 was made and accepted under the personal supervision of Matthews."

Pages 14 to 16.

There is no principle nor rule of law that will enable Matthews to repudiate a contract so made by himself in New Orleans, in the course of a business just organized by himself, and which he was himself conducting there.

Kershaw *vs.* Kelsey, 100 *Mass. R.* 561.

Even in the case of a foreign war, it is settled that where a creditor, although a subject of the enemy, remains in the country of the debtor, the debtor cannot justify his neglect or refusal to pay to the creditor his debt, and that if he do not pay, the creditor may sue and the debt will carry interest.

In the same manner the debtor is bound to pay to the agent of the absent alien enemy, if there be such agent in the country of the debtor, and if he do not, the debt will carry interest.

Ward *vs.* Smith, 7 *Wall.* 447.
2 *Kent*, 63.
Conn. *vs.* Penn., *Peters' C. C. R.* 496.
Denniston *vs.* Imbrie, 3 *Wash. C. C. R.* 396.

If this be so, upon what principle can it be claimed that Matthews, who went to New-Orleans before the war, and who there, before the war, formed and advertised a partnership for a business to be carried on there, in which he was himself to be the principal active partner, and who was still there transacting his business when this acceptance was given, may repudiate his contract made there for a valuable consideration, with persons who had a fair right to believe him to design to remain in New-Orleans, and

who, it was quite clear, had no thought or intention of violating any law or policy of the General Government, and whose acts now in question could not work aid to the rebellion or injury to the United States.

See statement above, and also Ex. B., page 20, and the advertisement of the partnership, page 31.

Point IV.

Before the proclamation of August 16, 1861, which prohibited commercial intercourse between the North and some parts of the South, such intercourse was lawful and unrestricted, except such as would involve a breach of the blockade.

1. War to be war, must be declared or recognised by Congress.

Constitution U. S., Art. 1, § 8, subsection 11.

2. And it is true of all wars and in all countries, that they are wars, or not wars, as the Government determine. The state of actual hostilities is not conclusive.

1 *Kent*, 55 and 61, note (*h.*)
Lawrence's Wheat. 505, 512.

3. It is clear, upon authority, that the sovereign may, in case of civil war, exercise belligerent and sovereign rights against his rebel subjects, and that this is in the discretion of the sovereign.

Nor is it doubtful that the sovereign may exercise some of his belligerent rights, without exercising them all.

Prize Cases, 2 *Black*, 635, 673. Per Grier, J.
Rose *vs.* Himley, 4 *Cranch*, 272.

Kershaw *vs.* Kelsey, 100 *Mass. R.* 576.
The Amy Warwick, 2 *Sprague*, 123.
U. S. *vs.* Lane, 8 *Wall.* 195.

Accordingly, the Government of the United States, before the 16th of August, 1861, had done nothing in exercise of their belligerent rights, but to establish a blockade of certain ports, and all that this court decided on that subject in the *Prize Cases*, (December Term, 1862,) is to be found in the opinion of Mr. Justice Grier, in these words: "We are of "the opinion that the President had a right, *jure* "*belli*, to institute a blockade of ports in possession "of the States in rebellion, which neutrals are bound "to regard.

Prize Cases, 2 *Black.* 671.

The only other question in these cases was, what was to be deemed enemies' property, *when taken violating the blockade*, and the determination was in these words: "Whether property be liable to cap- "ture as enemies' property, does not in any manner "depend on the personal allegiance of the owner. "It is the illegal traffic that stamps it as enemies' "property; it is of no consequence whether it be- "longs to an ally or a citizen."

Prize Cases, 2 *Black.* 674.

The proclamation of blockade was April 19, 1861; but long after this, and as late as October of that year, the Government brought to trial, in New-York, the officers and crew of the rebel privateer, Savannah, for piracy, which was a most potent declaration that they did not for all purposes design to treat the rebellion as a war.

An examination of the proclamation of April 15, 1861, which called out the 75,000 militia, and that

of April 19, 1861, which established the blockade, and the act of Congress of July 13, 1861, which authorized the proclamation of August 16, 1861, and that proclamation itself, will abundantly show that the Government of the United States down to that time called the rebellion an insurrection, treated it and dealt with it simply as an insurrection.

See Proclamations, 12 *Statutes*, *Appendix*.
Act of July 13, 1861, 12 *Statutes*, p. 257, § 5.
See also Act of Aug. 6, 1861, 12 *Statutes*, p. 326, § 3.

Upon well settled principles, it rested with the Government to give the rebellion a name and a character, and until after August 16, 1861, they called it an *insurrection* or a *combination*, and by no stronger name, and until that date they sanctioned and allowed every kind of intercourse, except through blockaded ports; but by the law of July 13, 1861, they authorized the President to declare certain Southern States to be in insurrection, "*and thereupon*," (says the act,) "*all commercial intercourse by and between "the same, and the citizens thereof, and the citizens "of the rest of the United States, shall cease and be "unlawful so long as such condition of hostility "shall continue.*"

The proclamation under this act was issued August 16, 1861, and *thereupon*, in the language of the act, commercial intercourse became unlawful.

Of course it was lawful up to that time.

This legislative declaration of the Government, whose fiat upon the question of war or no war, of intercourse or non-intercourse, was absolute everywhere, is controlling against every citizen, and in all the courts of the United States upon the question under consideration, viz.: whether it was lawful or

unlawful for citizens of the two sections to carry on business.

This must be so. It would work the greatest injustice if parties could not rely upon so clear a legislative declaration.

And, to test the question, let it be supposed that the *insurrection* (so styled by Congress and the proclamations) had ended on August 15, 1861, the day before the proclamation prohibiting commercial intercourse, would any court hold that commercial intercourse had not been lawful; that contracts of purchase and sale, and other contracts in the usual course of business, were not binding; that agencies and partnerships were dissolved, and that all this was true, though men went and came, and bought and sold as before, and the Government itself, the supreme arbiter upon the question, had, on July 13, 1861, by the act of that date, in effect, legislatively declared that commercial intercourse was lawful, until the President, by proclamation, should declare otherwise?

We are confident this could not be.

(We ask particular attention to the argument contained in the opinion of Chief Justice Church, in this case, from near the top of page 170 to the top of page 174. The case is reported in

50 *New-York Rep.* 166.)

The following cases decide the precise point now under consideration in favor of the defendant in error.

Speed *vs.* Smith, U. S. Ct. Miss., reported 2 *Am. Law Times Rep.* 149.

Leathers *vs.* Com. Ins. Co., 2 *Bush.* (*Ky.*) 296.

Perkins *vs.* Rogers, 35 *Ind.* 124.

It is believed that no case has been decided in opposition to this view.

Certain cases are relied upon as establishing a doctrine fatal to contracts made before August 16, 1861.

The *Prize Cases*, in 2 *Black.*, are of these, but it is already seen that those cases are an authority only to the point that the Government of the United States had the right, under the circumstances, to establish a blockade which neutrals were bound to respect, and a right to capture property seeking to violate that blockade.

But those cases by no means establish the point that the United States did not allow intercourse between the different sections until they saw reason for prohibiting it, as they did on August 16, 1861.

The case of *Mrs. Alexander's cotton* arose in May, 1864. The cotton was seized in rebel territory, temporarily in possession of the federal forces. In addition, it was in proof that Mrs. Alexander had aided the rebels, and the Court deemed her and her property within the acts of Congress providing for the confiscation of property. Under these circumstances, what is said in the opinion cannot be deemed to have any bearing upon the question whether commercial intercourse was lawful between the two sections in April, 1861.

See the case, 2 *Wall.* 404, 420.

We have not doubted the truth of the general principle so often affirmed by this court, that "pub-"lic war, duly declared or recognised as such by the "war-making power, imports a prohibition by the "sovereign to the subjects or citizens of all com-

"mercial intercourse and correspondence with citi-
"zens or persons domiciled in the enemy's country."

The William Bagaley, 5 *Wall.* 377–405.
Hanger *vs.* Abbott, 6 *Wall.* 535.
The Protector, 12 *Wall.* 700.
Brown *vs.* Hiatts, 15 *Wall.* 177.
McKee *vs.* U. S., 8 *Wall.* 163.
U. S. *vs.* Lane, 8 *Wall.* 185.

But this is a very different thing from asserting that the Government could not sanction commercial intercourse so long as they deemed it for the best interests of the people and the Government itself. That the Government might do this, is unquestioned, and is in substance affirmed in the last two cases cited above.

In U. S. *vs.* Lane, Mr. Justice Davis says: "But "the rigidity of this rule may be relaxed by the sov-
"ereign, and the laws of war so far suspended as to "permit trade with the enemy. Each State settles "for itself its own policy, and determines whether "its true interests are better promoted by granting "or withholding licenses to trade with the enemy."

8 *Wall.* 195.

In McKee *vs.* U. S., the same learned Judge seems to us to recognise the truth of the precise point now in question, namely, that Congress permitted commercial intercourse up to the date of the proclamation of August 16, 1861. He says:

"It is a familiar principle of public law, that un-
"licensed business intercourse with an enemy during "a time of war is not permitted. Congress, there-
"fore, (acted) in recognition of this principle when "it declared, on the 13th of July, 1861, that com-
"mercial intercourse between the seceding States and

"the rest of the United States should cease and be "unlawful after the proclamation of the President, "that a state of insurrection existed, (and) authorized "the President, in his discretion, to license trade."

8 *Wall.* 166.

See to the same purpose the opinion of Mr. Justice Swayne, in "The Ouachita Cotton," 6 *Wall.* 530, 531.

The case of Woods *vs.* Wilder, in the Court of Appeals of New-York, held a bill of exchange void drawn in Georgia after the proclamation of the 16th of August, 1861, upon the principle that the interdiction of intercourse by that proclamation "involved a "prohibition against every species of private con- "tract with a subject or citizen of the enemy;" and the opinion near the close says: "The terms of the "act (of July 13, 1861,) are, that the President may "declare certain districts in insurrection, and that "thereupon all commercial intercourse, etc., *shall* "*cease*, and be unlawful, etc. This language implies "a permission that such intercourse should continue "until the proclamation should be made, and the "good faith of the Government would be pledged to "give effect to this implied permission."

43 *N. Y.* 164–171.

Point V.

The interest was calculated only from June 1, 1862, which was after New-Orleans was reduced to Federal possession.

See p. 34.

Proclamation of May 12, 1862, 12 *Statutes*, Appendix.

The Venice, 2 *Wall.* 258.

The Ouachita Cotton, 6 *Wall.* 531.

Point VI.

There should be judgment for the defendant in error.

December, 1874.

AUG. F. SMITH,
Of Counsel for Deft in Error.

Supreme Court United States.

OCTOBER TERM, 1875.

EDWARD MATTHEWS, Plaintiff in Error,
vs.
NELSON McSTEA, Defendant in Error. } No. 10.

In Error to the Court of Common Pleas for the City and County of New York.

BRIEF FOR DEFENDANT IN ERROR.

J. HUBLEY ASHTON,
Of Counsel.

M'GILL & WITHROW, PRINTERS, WASHINGTON, D. C.

Supreme Court of the United States.

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vs.
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} No. 10.

In Error to the Court of Common Pleas for the City and County of New York.

BRIEF FOR DEFENDANT IN ERROR.

STATEMENT OF THE CASE.

Matthews, the plaintiff in error, went from New York to New Orleans in March, 1861, and there formed a copartnership for the transaction of cotton factorage and general commission business with James S. Brander, jr., and Samuel L. Chambliss, of that city, under the name of Brander, Chambliss & Co.

It was contemplated that Matthews was to be the managing partner, the head of the house, as he owned the largest interest, one half, and appears to have been the only experienced business man of the concern.

James S. Brander, junior, was a young man of no steady habits, and a brother-in-law of Matthews, who had married his sister, and was placed in the new firm by his father, himself a special partner, who resided at the time in New

York, though he had been engaged, and was then interested, in business in New Orleans; but young Brander was to have no control of the new firm. Chambliss, the other other partner, seems to have been a planter, and not a merchant.

So the management of the house was to devolve, and necessarily so, on Matthews.

All this appears from the articles of copartnership, (Rec. p. 20,) the correspondence of Matthews, (Ib., pp. 22–24,) and the testimony of Burke, (Ib., 14–17,) and Brander, senior, (Ib., 25–34.)

The copartnership articles were signed on the 27th of March, 1861.

The evidence is, that for a month afterwards, prior and subsequent to the transaction in question here, Matthews was in the city of New Orleans, taking an active part in the management of the business of the concern at 56 Carondelet street.

Chief Justice Church was unquestionably right when he said, at the close of his opinion in this case, that *New Orleans was the business residence of Matthews, and, for aught that appears, he intended, on the* 23d *of April*, 1861, *the date of the transaction in question, to remain there.*

On the 23d of April, 1861, a bill of exchange for $8,050.06 was drawn on the firm by merchants in New Orleans, and accepted in its name, for which acceptance Brander, Chambliss & Co. received a commission of 2½ per cent. (Burke, Rec., p. 16, fol. 37.)

It is impossible to determine from the testimony, as reported in the bill of exceptions, whether the signature of the firm in accepting the draft was actually written by Matthews, or by his partner, Brander.

It is certain, however, that Matthews was then in New Orleans, personally superintending the business, and the testimony of Mr. Burke, his principal clerk, explicitly was that the bill "*was made and accepted under the personal*

supervision of Matthews, the defendant." (Rec., p. 16, fol. 36.)

This acceptance was given on the 23d of April, 1861. On the 26th of April Matthews, "acting for and representing his commercial firm of Brander, Chambliss & Co.," executed a power of attorney to Mr. Burke, the chief clerk, giving him plenary authority to conduct the business. (Rec., pp. 17–19.) Shortly after this he left New Orleans for New York, and never returned.

During the month of May, 1861, Matthews appears to have been in constant communication by letter with Mr. Burke, styling himself "*the head of the house,*" and giving Burke directions about the management of the business. (Rec., pp. 22–24.)

This correspondence shows that communication by mail and telegraph between New York and New Orleans was open in May, 1861.

Suit being brought on this draft of April 23, 1861, and other paper of a later date, in the court of Common Pleas of New York city, against Matthews, he interposed in his answer a special defense, and apparently only one, to *this* draft, to the effect that it was accepted by his firm for the accommodation of the drawers, and was given by them to McStea, Value & Co., of which firm plaintiff was a member, as collateral security for an antecedent debt. (*Vide*, 4th par. of answer, Rec., p. 5, fol. 12.)

At the trial in the court of Common Pleas it was shown, as appears by the bill of exceptions, that the drawers paid a commission to Matthews' firm for the acceptance, and that it was delivered by drawers to payees (McStea, Value & Co.) instead of cash in payment of an overdue note of the drawers. (McStea, Rec., p. 12, fol. 28.)

On appeal of defendant to the General Term of the Common Pleas the case appears to have been heard on the bill of exceptions, and a "statement of the case," signed by coun-

sel, in which it was said that Matthews resided, at the date of the draft, in New York. (Rec., p. 36.)

The case was then brought by appeal from the General Term into the Court of Appeals, where the judgment was affirmed.

The decision of the Court of Appeals is reported in 50 New York, 175.

The court having determined that the plaintiff in error is entitled to its judgment upon the question decided by the Court of Appeals, namely, whether the partnership had been dissolved before the date of this draft by the war of rebellion, we proceed to consider that question.

ARGUMENT.

First.

There was no dissolution of this copartnership until Congress, by the act of July 13, 1861, prohibited commercial intercourse with the insurgent States.

I. The general institutional doctrine that war duly declared or recognized by the competent authority of the State, works a dissolution of commercial partnerships between persons subject to its jurisdiction and persons residing within the territory of the other belligerent, is said to be a necessary consequence of the other proposition, that commercial intercourse with the enemy is unlawful.

The doctrine was for the first time fully expounded by Chancellor Kent, in 1819, in the celebrated case of Griswold *v.* Waddington. (16 John., 488.)

The question to be considered and decided in the present case is, at what date in the history of the late civil war the doctrine of that authority became applicable to a partnership, existing before the commencement of hostilities, between a citizen and resident of New York and a citizen and resident of Louisiana; or, in other words, when did all

commercial intercourse between the partners become unlawful?

The present inquiry relates, therefore, to the rule of non-intercourse with the enemy in a domestic or civil war, as distinguished from a public foreign war, and is further limited to that rule in such a war prosecuted by the Government of the United States under the Constitution of the United States.

II. The President is commander-in-chief of the army and navy. "He shall take care that the laws be faithfully executed." And he swears to "preserve, protect, and defend the Constitution."

1. The question, then, arises as to the character and extent of the power of the President, when, in a domestic insurrection, hostilities waged against the Constitution and the laws, assume the dimensions of a war, in the absence of any legislation on the part of Congress upon the contest?

The general answer is, that the President may prosecute opposing hostilities, offensive as well as defensive, on such a proportional scale as may be necessary to re-establish, or to support and maintain the Government. The instruments placed in his hands for the prosecution of such hostilities by the Constitution and the laws are the army and navy. And they are to be employed by the President according to the usages of civilized war.

2. By the rules of public law a belligerent in a foreign war is authorized to capture "*enemy's property*" at sea.

The President, therefore, in a domestic contest, which has assumed the dimensions of a war, may employ the navy under his command for the capture of property at sea, which, if the case were one of a formal war, would fall within the designation of "enemy's property."

The phrase "enemy's property," this court said in the *Prize Cases*, (2 Black, 674,) is "a technical term peculiar to prize courts."

The question, therefore, arises, what property at sea is to

be deemed, in a foreign war, enemy's property, and liable to hostile maritime capture under the public law?

The general answer is, that within this designation is included property deemed hostile; and property found at sea is deemed hostile when it is owned by a person domiciled at a place or in a district in hostile occupation, or when it is found in certain other predicaments or situations which will subject it to condemnation in a prize court.

Sir William Scott said that *property of enemies* was "held in construction and practice to embrace all property liable to be condemned as prize;" adding that "by *fiction*, or rather by intendment of law, *all* property condemned is the property of *enemies;* that is, of persons *so to be considered* in the particular transaction." (5 Rob., 176.)

Chief Justice Marshall illustrated the doctrine of property constructively hostile by reason of the situation or predicament of it with relation to a belligerent, by the case of a search resisted or of an attempt to enter a blockaded port.

He said: "It is well known that a vessel is condemned as prize if she acts in such a manner as to forfeit the protection to which she is entitled by her neutral character. If, for example, a search be resisted, or an attempt be made to enter a blockaded port, the laws of war, as exercised by belligerents, authorize a *condemnation as 'enemy's property,'* however clearly it may be proved that the vessel is in truth the vessel of a friend." (Maley *v.* Shattuck, 3 Cranch, 489.)

The inquiry whether the subject of maritime capture is enemies' property depends on the question whether it is liable to condemnation in a prize court.

3. It follows, therefore, that the President, in such a contest, may capture on the ocean property found in the *predicament* of belonging to persons who, by residence, are within the actual control and authority of the insurrectionary or hostile power, and property found in other predicaments which, under the rules of maritime warfare, impress upon it a hostile character.

Property so situated is liable to capture, because the

Government would be placed on an unequal footing with the insurgents if it were not permitted to exercise that right, or if maritime hostilities were required to be prosecuted in such a contest within narrower limits than in a formal war. Hence it was that, as soon as the insurgent government in the late war issued letters of marque, authorizing the capture of *our* commerce on the ocean, the President issued his proclamation of intended blockade, and authorized the naval capture of property owned in the insurgent territory as enemy's property.

The President treated the state of things as a war *de facto*, which demanded a recourse to the measures of maritime hostility against the insurgents, authorized by the usages and principles of civilized war.

4. Nor is any act of Congress required in such an emergency in order to warrant on the part of the President the exercise of this right of capture on the ocean.

When the state of things becomes in his judgment a war *de facto*, he is not only authorized, but bound, to prosecute hostilities conformably to the rules of public law.

The capture of property owned by persons residing in places within hostile dominion, or in permanent or temporary hostile occupation, diminishes the wealth of such places, and reduces the power of the insurgent rulers and their hostile organizations.

There may be the same reason, therefore, for subjecting such property to capture before Congress has legislated upon the contest, as exists for this mode of coercing the hostile power after it has legislated.

III. But the only legal consequence which flowed from the recognition by the President of the state of things which occurred in this country in the spring of 1861 as war *de facto*, was the rightful subjection of certain property on the ocean in certain predicaments of ownership and use to capture and condemnation.

The inhabitants of the insurgent States, before Congress legislated upon the contest, were impressed with a hostile

character in *no other* sense and for no other purpose than this, that their property at sea might be seized and appropriated by the United States as one of the means of coercing the hostile organization which dominated in those States.

1. The public law of war merely regulated the prosecution of maritime hostilities by the President against the insurgents. It declared simply what private property might be captured under his authority on the ocean in the prosecution of such hostilities. It simply said to the President, if you find on the ocean private property of certain descriptions and in certain predicaments, it may be captured as a mode of diminishing the power of the insurgents. And in determining what property was capturable, it regarded only the actual, *de facto*, relation of certain *things* in certain situations to the hostile power, and not the civil, legal, or political relations of the owners, with the lawful Government, or the citizens of other portions of the United States.

The character of the property, by reason of the interest which the hostile power may have in its preservation or safety, and not the character or *status* of the owner, is what is considered, in such cases, in subjecting it to capture and condemnation.

The public law, in such a case, first determines what territory is to be deemed, *for the purposes of maritime hostilities and the prize law*, hostile, or, in the phraseology of prize courts, "enemy's territory." This is a matter of fact. *De facto* possession and jurisdiction held and exercised by the hostile power invest a place or district with the character of "enemy territory," in the sense of the prize law. Having furnished this criterion, the public law regards property found on the ocean, owned by persons domiciled in that territory, liable to capture, and designates it as "enemy's property," *for the like purposes of maritime hostilities and the prize law.*

The property is so designated, not because any change has necessarily taken place in the legal or civil status or

character of the owners by reason of the dominion of the hostile power over the territory of their residence, or in the rights and relations of the citizens of the rest of the United States, but because the particular property is or may be made contributory to the wealth and military strength of the place where the property is owned. The *property* is for this reason invested with a hostile character in the eye of the public law, and made liable to maritime capture and condemnation as prize.

The public law, therefore, pronounces, in such a case of *de facto* war, no judgment whatever upon any question, except the question as to what property found by the President on the high seas may be captured and condemned as prize of war.

2. The civil and municipal rights of the inhabitants of the territory, designated by the prize law as "enemy's territory," under the Constitution and the laws, and those of the inhabitants of the rest of the United States, were not changed or affected by the state of things, until the state of things was recognized as a war by Congress, except in so far as property of a certain description might be liable to capture in the prosecution of the maritime hostilities waged by the President to suppress the insurrection.

Before Congress legislated the contest was a war *de facto*, in which the political department of the Government represented by the President was invested with the power of directing the prosecution of hostilities at sea conformably to the rules of public law against the hostile organization, and in which property of a certain description controlled by that power was liable to capture by the Government. When the political department of the Government, invested with the sovereign authority to declare war, recognized the hostilities actually waged against the Constitution and the laws as a war, the contest which had previously been a war *de facto* became a war *de jure*, with all the legal consequences of a complete legal state of hostilities between belligerent powers.

When Congress legislated upon the contest, and not before, a state of mutual and reciprocal hostilities between the United States and the insurgent States commenced, with all the incidents and consequences of such a relation of the parties to the people of the United States.

Trade and intercourse by land or water with places and districts under hostile control became unlawful to the people of the rest of the United States; civil remedy on contracts between parties to the contest made before the war was suspended; and pre-existing contracts of continuing performance, such as partnerships and insurances, were dissolved.

The theory that as soon as the President issued his proclamation of intended blockade of the 19th of April, 1861, *eo instanti et ipso facto*, all the momentous *intra-territorial* consequences of a state of war *de jure* resulted and affected the rights and duties and relations of the people of the United States, is one of the most monstrous that has ever been propounded in a court of justice. It nullifies the power of Congress by depriving it of all field for its exercise.

3. What is the effect and what are the intra-territorial or municipal consequences of a complete legal state of mutual and reciprocal hostilities?

War puts every individual of the respective governments, as well as the governments themselves, into a state of hostility. It is a crime to hold intercourse with the enemy. (Gist *v.* Mason, 1 T. R., 84.) "In the state of war nation is known to nation only by their armed exterior; each threatening the other with conquest or annihilation. The individuals who compose the belligerent States exist, as to each other, in a state of utter occlusion. If they meet, it is only to combat." (The Rapid, 8 Cr., 161.) "It reaches to all interchange, or transfer, or removal of all property, to all negotiation and contracts, to all communication, to all locomotive intercourse between individuals of the belligerent States." (Griswold *v.* Waddington, 16 John., 478.)

The statement of these doctrines is enough of itself to prove that, under the Constitution of the United States, war must be declared or recognized by an act of the sovereign authority of the State having the power to declare war, before, in an internal contest, such a revolution in the ordinary condition, rights, duties, and relations of the people can take place.

Such a change in the condition of the country and the rights and duties of the citizen, should not, under any system of government, be allowed to be brought about, without some act of the department of the government to whom this sovereign prerogative is confided by law.

4. Such consequences as have been described can only ordinarily flow from an exertion of *legislative power;* and this was one of the reasons, doubtless, that the prerogative of declaring war was vested by the Constitution in the legislative department of this Government.

"*War,*" says Mr. Justice Story, "*is, in its own nature and effects, so critical and calamitous, that it requires the utmost deliberation, and the successive review of all the counsels of the nation.*" (2 Constitution, 80.)

If this is so in a foreign war, *a multo fortiori*, it must be true in a case of an internal war, which is to dissolve for the time being the ties which bind together different parts of the same country, suspend the exercise of the vast body of civil rights guaranteed and upheld by the municipal constitution and laws, place all who are on different sides of a territorial line in a "*state of utter occlusion,*" and render intercourse of every kind between them a criminal offense.

The state of mutual and reciprocal hostilities in such a contest—embarking the whole nation in one common bottom, making every individual on one side the enemy of every individual on the other, and rendering all intercourse a crime—cannot legally commence under our Constitution until the Congress, in whom solely the power to declare war is vested, either by express declaration or by some

other manifestation of its sovereign will, has placed the country in a state of war.

5. Before Congress has manifested its intention of placing the country in a legal state of hostility, the President has full power, under the Constitution, to meet hostilities actually waged against the Government by prosecuting war conformably to the rules of public law. He may and must meet force with force; but he can do no more. All the rights of the Government, in time of war, within loyal territory and against citizens there residing, are in abeyance until Congress has recognized a state of war.

"The statute of 1807 provides that whenever it is lawful for the President to call forth the militia to suppress an insurrection, he may employ the land and naval forces of the United States for that purpose.

The authority to use the army and navy is thus expressly confirmed; but the manner in which they are to be used is not prescribed.

That is left to the discretion of the President, guided by the usages and principles of civilized war, and those principles and usages undoubtedly authorize the capture of 'enemy's property' at sea.

What is 'enemy's property' is a judicial question, to be decided by the prize courts; and, unless otherwise instructed by their own sovereign, they must be guided by the rules and principles of public law." The Amy Warwick, (2 Sprague, 135.)

This is the extent of the power exercisable by the President before Congress acts upon the situation. If hostilities should be prosecuted on the ocean, he may establish a blockade of ports in hostile occupation, and capture property found there which the prize courts under their rules deem confiscable as the property of enemies. But it remains for Congress to give this *de facto* war the character and effect of a war *de jure*, and create that complete legal state of hostilities which renders unlawful all interchange, or transfer, or removal, of property, all negotiation, all locomotive intercourse, and reaches to a state of utter occlusion, to any

intercourse but one of open hostility, to any meeting but in actual combat.

IV. The proposition that nothing less than an act of Congress, declaring or recognizing a state of war, will operate to render all intercourse, on the part of citizens of the United States residing within our territory with the hostile territory unlawful, is in conformity with and sustained by the doctrine of this court in *Brown* v. *United States*, (8 Cranch, 126, 128.)

We hold that doctrine to be, that nothing but an act of Congress recognizing war can place the country in a legal state of hostility, and impose upon the citizen in our territory the duties incident to such a state, or give the Government the *intra-territorial* rights which war confers, among others, the right to have all intercourse with the enemy suspended; and moreover, that before some of those rights are capable of being exercised, even after a declaration of war, (as the right to confiscate enemy's property *in our territory*,) Congress must legislate further, and provide specially for the exercise of the rights.

Chief Justice Marshall takes for granted that nothing but an exercise of legislative power can have the effect of placing the country in a state of legal hostility; and he proves conclusively that even a declaration of war is not sufficient to warrant the confiscation of the property of an enemy found in our territory at the breaking out of hostilities.

We venture to say it would have shocked that great magistrate if the proposition had been advanced in his day that a state of things merely recognized by the President as *de facto* war, and without *any* legislation of Congress, operated by its own force to produce a legal state of war, with all its legal consequences to the people of the United States.

Whatever powers and rights accrue to the Government *extra*-territorially, in such a case its powers *infra*-territorially, over the business and property of the citizen, are in abeyance until Congress recognizes the contest as a war.

We have no doubt that the Government cannot exercise

or claim *any* rights incident to a state of war within our territory, against our own citizens, without authority of an act of Congress; and, under the decision in *Brown* v. *United States*, there are some belligerent rights, even as against public enemies, which cannot be exercised in our territory without a special law, even after a declaration of war by Congress.

The nation must "express its will" (to use the phrase of Chief Justice Marshall) to that effect, before the rights of war can be asserted by the Government within the territorial jurisdiction of the United States, against an enemy or citizen of the United States.

V. The decision of this court in the *Prize Cases*, (2 Black, 635–699,) gives no countenance to the proposition advanced on the other side that upon the issuing of the Proclamation of the 19th of April, 1861, *eo instanti*, the people of the two sections of the Union were, as to each other, in a state of utter occlusion.

There have been many misconceptions of that decision; but this is the most palpable misconception which has ever been indulged in as to its doctrine.

What the court determined in those cases simply was, that it was competent for the President to decide when the rebellion had reached such dimensions as required him to exercise the powers of war on the *ocean* with a view to its suppression; that the exercise of such powers on the ocean, in that case, was lawful without a special antecedent act of Congress; and that property found there in certain predicaments was "enemy's property" *in a peculiar technical sense for purposes of prize*. The court determined nothing as to the legal consequences of the state of things treated as war *de facto* by the President, as affecting the inhabitants of the insurgent States, or as affecting the rights and relations of the citizens of the rest of the United States, except in respect to commercial property found at sea, which was or might be made contributory to the wealth and power of the hostile organizations.

The court did not decide that the people of the rebel States were public enemies, or that the territory was enemy's territory. It held merely that their commercial property on the sea was liable to be captured in the maritime hostilities set on foot by the President, and that for the *purposes of prize* places in occupation hostile to the Government, were to be treated in a Prize Court as "enemy's territory."

The judgment of the court furnished no rule for the guidance of any court of the United States except a Prize Court, or in respect to any subject-matter other than prize.

To prevent any possible mistake in regard to the use of the term "enemy property," Mr. Justice Grier expressly says that "enemy property" "*is a technical term peculiar to Prize Courts.*" Again he says: "Whether property be liable to capture as 'enemy property' does not in any manner depend on the personal allegiance of the owner. It is of no consequence whether it belong to an ally or a citizen." (2 Black, 674.)

We apprehend that eminent Judge and this court had not the remotest thought that their doctrine would ever be invoked to nullify vast numbers of contracts, deprive millions of people of their ordinary civil rights under the Constitution, and dissolve as, of course, hundreds of commercial partnerships, from and upon the instant the Proclamation of the 19th of April was issued by the President.

VI. The sovereign power alone is possessed of authority to make or recognize war with all its necessary and legitimate consequences to the members of the political society. As the different rights which constitute this power, originally resident in the body of the nation, may be separated or limited according to the will of the nation, it is from the peculiar constitution of each State that we are to learn where the power resides that is authorized to make war with all its consequences in the name of the society at large. (Vattel, Bk. III, ch. 1.)

In Great Britain it is the exclusive prerogative of the Crown; in other countries it is usually confided to the ex-

ecutive department; in this country it belongs to Congress. (2 Story on Con., 88.)

Chancellor Kent, in *Griswold* v. *Waddington,* says that the rule against intercourse and the other legal and legitimate consequences of war do not take effect until a state of war is "*duly recognized and explicitly announced.*" (16 John., 449.)

"Duly recognized and explicitly announced" by whom? The department of the Government invested by the constitution of the State with the power to declare war.

Though solemn declarations and previous notices to the enemy are now laid aside, in the practice of Europe, the new rights and duties growing out of a state of war do not arise until war is duly recognized and explicitly announced by the authority of the State competent to declare war.

Under our Constitution the President may, without a special antecedant act of Congress, wage hostilities, according to the rules of public law, when hostilities are commenced against the United States. But a complete legal state of war, with all its consequences to all the people of the United States, cannot exist until Congress recognizes the existence of war, by an express declaration, or something equivalent to it.

The power to declare war is nothing but the power to involve the nation in the new relations, and impose on the citizen the new obligations, incident to a state of war; and it would seem to be a self-evident proposition that no department of the Government, except that having power to declare war, can involve the nation in those relations, and impose on the citizen those obligations.

Hostilities waged by the President do not, of themselves, without an act of Congress create such a general and legal state of war; though under a monarchy recourse to arms by the king may place his dominions in a state of war, because he has power to declare war.

The Court of Vice-Admiralty at Halifax, in 1812, decided

that American property seized after the declaration of war by the United States against Great Britain, and before the king recognized a state of war as existing, by express declaration, or by some other manifestation of his hostile intention, could not be condemned in a British court as prize.

The Brig Dart, Stewart, 304.
The Little Joe, Ib., 414.

Dr. Croke, in the case of the Dart, said:

"Where there is no express declaration of war, the hostilities exercised on the part of Great Britain must be sanctioned by the sovereign, or there must be some acts, or other proceedings, which show his intention of placing the country in a state of hostility in respect to any given country. If not an express declaration, there must be something equivalent to it. Whatever declarations of war, therefore, may be made by foreign powers, whatever hostile acts may be committed by them, or whatever means may be adopted to repel them by the sole authority of the subjects in virtue of the right of self-defense, the state of mutual and reciprocal hostilities between any country and the British dominions cannot legally commence till the king, in whom solely the power of peace and war is vested, either by express declaration, or by some other manifestation of his hostile intentions, such as having recourse to arms, has placed his dominions in a state of warfare. When such manifestation is made, and not before, the complete state of hostilities exists, with all its consequences, and since, the moment a man becomes an enemy, all his antecedent rights are annihilated, it must, of course, operate upon all preceding transactions. None of the cases which have been cited are inconsistent with this doctrine. * * * * * Till some signification of His Majesty's intention has been made, I cannot consider the subjects of America as alien enemies, to every purpose of law."

It was regarded necessary in England that an express statute should be passed, after the commencement of hostilities which preceded our Declaration of Independence, prohibiting trade and commerce with the colonies, in order to render such trade illegal; and accordingly the act of 16 George 3, ch. 5., was enacted by Parliament prohibiting

all manner of trade and commerce with the colonies. (See The Dickinson, 1 H & M., 45.)

This statute is the prototype of the Act of July 13, 1861.

VII. No Proclamation of the President, previous to the assembling of Congress in 1861, pretended to interfere with the freedom of individual intercourse and commerce not involving a breach of blockade.

Therefore, if the President might have lawfully exercised the power to prohibit all manner of trade and commerce with the insurgent States, he did not exercise it; nor did he even *declare* that it was or would be illegal by the effect of his acts and proceedings, or by implication from his Proclamations or either of them. There is nothing either in the Proclamation of April 15, calling out the militia, or in that of April 19, 1861, announcing his intended blockade, to indicate in the remotest manner, that the Executive Government supposed such intercourse was or would be illegal as a result of or by import from its acts, or by implication from either of its Proclamations.

If the President had intended to prohibit intercourse, or supposed a prohibition was to be implied, or would result from his Proclamations, or either of them, or his public acts, he would have so in express terms declared, in order to give proper notice and warning to the people of the United States.

Chief Justice Church well said, in reference to the Proclamation of April 19, 1861:

"Nothing is plainer than the intention, by this Proclamation, to avoid any interference with the business relations of the citizens of the country, except so far as the blockade should have that effect until the meeting of Congress. It seems incongruous to hold that a Proclamation which expressly declares protection to citizens in their lawful avocations should have the legal effect of invalidating all business transactions." (50 N. Y., 172.)

But more and further than this, it is an historical fact which the court will take notice of, that the Government

permitted intercourse and commerce with the insurgent States long after the 19th of April, 1861.

The postal service was not discontinued in Louisiana and the other rebel States until the *27th of May*, 1861, although the act of February 28, 1861, expressly gave authority to the Postmaster General to stop the mails whenever in his opinion postal service could not be safely continued in any State.

This appears from the letter of Mr. Blair to the House of Representatives of July 12, 1861, stating his reasons for discontinuing the service on the 27th of May, in which he says that the very object of the Government was to diffuse correct information among the people of the South by means of the postal service. (Cong. Globe and Appendix, 1st S. 37th Cong., 1861, p. 115.)

Communication by railroad between New Orleans and the North was not interfered with until July 1, 1861.

The telegraph was in operation for a long time after 19th of April.

This record shows that Matthews, who is now setting up the unworthy defense that his partnership was dissolved on the 19th of April, was in communication from New York by letter and telegraph with his firm in New Orleans, through the month of May, giving directions about buying bills and advancing on cotton, etc., etc.

See his letters to Burke, Rec., pp. 22, 24.

VIII. The 5th section of the act of July 13, 1861, shows upon its face that Congress supposed that an act of legislation was necessary in order to render all commercial intercourse between the insurgent States and the rest of the United States unlawful, and that the acts, proceedings and proclamations of the President were not adequate in law to that end.

The court will observe that the act is *not declaratory* in its form or character. It is in its form and character a new and substantive act of legislation upon a subject which Con-

gress could not have supposed had been affected by any previous act or proceeding on the part of the Executive.

We quote the words of the 5th section:

"It may and shall be lawful for the President, by proclamation, to declare that the inhabitants of such State, or any part or section thereof, where such insurrection exists, are in a state of insurrection; and *thereupon* all commercial intercourse between the same and the rest of the United States *shall cease and be unlawful* so long as such hostility shall continue."

12 Stats., 257.

The Proclamation of the 16th of August, 1861, declares that certain States "are in a state of insurrection against the United States, and that all commercial intercourse between the same and the inhabitants thereof, with the exceptions aforesaid, and the citizens of other States and other parts of the United States is unlawful, until such insurrection shall cease, or has been suppressed."

12 Stats. 1262.

The statute is a legislative *judgment* upon the previous Proclamations and acts of the President, and shows that the American Congress was of opinion that commercial intercourse had not therefore been unlawful, and would not thereafter be unlawful until the President issued the Proclamation authorized by the statute.

The debates, moreover, in the Senate clearly show that the distinguished author of the act of July 13, 1861, the late Judge Collamer, was of opinion not only that the President's Proclamations of April, 1861, had not the effect of rendering intercourse unlawful, but also that an express statute was required in this domestic war to affect it with illegality. (Cong. Globe, 1st Ses. 37th Cong., 84.)

The Secretary of the Treasury, whose letter of July 9, 1861, upon the bill, recommended its passage as the means of enabling the Government to prevent commerce with the insurgent States from flowing in its accustomed channels—

to permit which, he said, would only add strength to the rebellion. "Its total cessation would bring with it a full sense of the war and inconvenience to which their position subjects them." (*Ib.*, 55.)

IX. There can be no question that if the President's Proclamation of April 19, 1861, was a prohibition against intercourse it was competent for Congress, as invested with the sole prerogative power of making war, to permit intercourse to be carried on. (U. S. *v.* Lane, 8 Wall., 185; McKee *v.* U. S., *ib.*, 163.) Nor can there be any question that the act of July 13, 1861, was an implied permission of intercourse until the President should issue the Proclamation authorized by the 5th section. The terms of the act are, that the President may issue his Proclamation, and THEREUPON all commercial intercourse shall cease. Now, if the President's Proclamation of intended blockade was an interdiction of all intercourse, we have this singular state of things, that between the 19th of April and the 12th of July, 1861, intercourse was *unlawful*, but between the 13th of July and the 16th of August, 1861, it was *lawful*, so that a transaction between a citizen of New York and a citizen of Louisiana was unlawful on the 12th of July, and a similar transaction between the same parties was lawful on the 13th or 14th of July!

No effect can be given to high and solemn acts of State which will make such jugglery with the most important rights of the citizen.

The only alternative conclusion is the correct one, that the President's Proclamation of April, 1861, did not carry with it a total interdiction of commercial intercourse, and did not interfere with the ordinary civil rights and relations and business of the citizens of the Union, except in so far as the blockade affected them, and that it was not until the act of July 13, 1861, took effect that intercourse became unlawful with the States declared in insurrection.

Congress postponed the fatal hour for shutting up those States until the President issued his Proclamation in order

that the country might prepare for the time when they and the rest of the United States should exist, as to each other, in a condition of utter occlusion.

And it would manifestly defeat this wise and benificent policy of the Government to hold that no intercourse could take place during the period it expressly reserved for making preparation for this most serious consequence of a state of war, and which it desired should be employed to that end by the citizens of the several States.

This court, in the case of *The William Bagaley*, (5 Wall., 407,) refer to the act of 1861, as showing "*that reasonable notice was given to all whose interest could be affected, and that ample opportunity and every facility were extended to them, to withdraw their effects from the States in rebellion, or to dispose of such interests as in the nature of things could not be removed.*"

This well-chosen language of Mr. Justice Clifford, speaking for the court, clearly imports, that before the act of 1861 went into effect by the issuing of the Proclamation of August 16, 1861, a man in the situation of this plaintiff in error was not debarred from holding intercourse with his firm in New Orleans, and the copartnership contract was not dissolved.

SECOND.

We think nothing has been adjudged by this court, or any court, inconsistent with the views here presented.

Leathers v. *Commercial Ins. Co.*, (2 Buch., Ky., 296,) presented the question, whether a policy of insurance was dissolved before 16th of August, 1861, and the decision was, that it was not.

Judge Robertson, speaking of the Proclamation of blockade, said:

"But that Proclamation did not attempt to affect interior intercourse and commerce between the people of the Confederate States, and cannot be understood as having had any such legal effect; and so Congress seemed to think, when, by the act of 13th of July, 1861, it authorized the

President to issue a proclamation interdicting all commercial intercourse between the citizens of the then and thereby recognized belligerent States."

The decision of this court, in the case of *The Protector*, (12 Wall., 700,) and that class of cases, seems to us to have no important bearing on the question in this case. So far as the statutes of limitations are concerned, the court adopted the obvious rule of convenience, that the President's Proclamations of intended blockade, and his so-called Peace Proclamations marked the beginning and close of the war.

In *Perkins* v. *Rogers*, (35 Ind., 126,) the Supreme Court of Indiana held, that in an action instituted in Indiana by a citizen of Louisiana against a citizen of Indiana, the time intervening between 16th of August, 1861, and the 20th of August, 1866, was to be excluded, in determining the question whether there was a bar of the statute of limitations.

Deady, J., in *Chappelle v. Olney*, (1 Sawyer, 402,) ruled this point in the same way, holding that a citizen of Arkansas had a right to sue in the courts of Oregon until the 16th of August, 1861.

Dillon, C. J., in *Brown* v. *Heat*, in the Circuit Court for district of Kansas, also decided the same point the same way, and, speaking of the act of July 13, 1861, said, "its prohibition is as broad as the prohibition of the law of nations."

Hill, J., in *Speed* v. *Smith*, (2 Am. Law, Times R. 149,) in the Circuit Court of Mississippi, held that commercial intercourse was not suspended by operation of the Proclamation of April 19, 1861. The contract in that case was made on the 1st of May. The court said: "At this time, and for some time afterwards, the mails of the United States were transmitted from the St. Lawrence to the Rio Grande. The telegraph communicated information from New Orleans to Boston. No interference had then been made by the United States with the trade between the citizens of the dif-

ferent States engaged in rebellion with those who remained loyal to the Union."

THIRD.

The partnership between Matthews and Brander and Chambliss was not dissolved *as to this acceptance*, which was given in the firm name, while Matthews was in New Orleans, taking an active part in the copartnership business, and made for a valuable consideration under his personal supervision, if it was not actually written by him in person.

In *Griswold* v. *Waddington*, the transactions with which the American partner was sought to be charged, occurred between the plaintiff and the British partner two years after the war begun, without the knowledge or consent of the American partner, and when he could not by any possibility have any agency, control, or consultation concerning them.

With respect to *such* transactions, it was held the war had dissolved the partnership, and the American partner could not be charged.

And the court felt the hardship of any rule which would subject the American partner to liability for these contracts of the English partner, with which he had had nothing in the world to do.

Said Ch. Kent: "If the defendant was chargeable in law by reason of such a protracted partnership, it would certainly be a case of *great hardship*, and a natural sense of justice would induce us to regret such a conclusion." (16 Johns., 445.)

And further: "If one alien enemy can go on and bind his hostile partner by contracts in time of war, when the other can have no agency, consultation, or control concerning them, the law would be as unjust as it would be extravagant." (16 Johns., 488.)

Griswold v. *Waddington* was, therefore, not *this* case. Here the contract with which the partner is sought to be charged was made only a few days after hostilities began, when he was in New Orleans in actual control of the business, and it is a contract, moreover, which the partner actually sanctioned, and for which his firm received a consideration. Well might this court say, slightly changing the language of Ch. Kent, in 16 Johns., "If the defendant was *not* chargeable, it would certainly be a case of great hardship, and a natural sense of justice would induce us to regret such a conclusion."

We submit, that the rule of *Griswold* v. *Waddington* is and should be confined to cases of like facts, and that where, at the breaking out of a war, both partners are found actually residing in the territory of one of the belligerents, the partnership is not dissolved by the war as to contracts made shortly after the beginning of hostilities with the knowledge and consent of both partners.

The rule applies only to contracts entered into in one country by one partner without the consent of the other, after the partners become separated by residence in the respective hostile countries.

If the plaintiff in error was in fact domiciled in New Orleans (as he really was) on April 23, the partnership, of course, was not affected by the President's Proclamation. Upon the facts of the case we should say it was clear that Matthews was domiciled in New Orleans when this draft was made. (Mitchell *v.* U. S., 21 Wall., 353.)

FOURTH.

But if this partnership was dissolved before the 23d of April, 1861, the acceptance having been made and given in the firm name, under the personal supervision of Matthews, for a commission of 2½ per cent., he is chargeable nevertheless as acceptor.

1. An acceptance may be by parol, or in writing. Every

act giving credit to the bill amounts to an acceptance. The acceptance may be implied by as well as expressly given. A parol promise to accept a bill is binding if the bill be purchased in consideration of the promise. (Townsley *v.* Sumrall, 2 Peters, 170; Coolidge *v.* Payson, 2 Wh., 66; 3 Kent, 82, *et seq.*)

2. That such a contract as this acceptance entered into by Matthews in New Orleans, even if he resided in New York at the time, and commercial intercourse was interdicted, was a perfectly valid contract, and did not contravene the laws of war or the public acts of the Government fully, appear by the decision and reasoning of the court in *Kershaw* v. *Kelsey*, (100 Mass., 561–578.)

FIFTH.

The judgment of the Court of Appeals should be affirmed.

J. HUBLEY ASHTON,
Of Counsel for Defendant in Error.

APPENDIX.

Opinion of Court of Appeals.

Church, Ch. J.—The general question in the case is whether the defendant Matthews is liable as a member of the firm of Brander, Chambliss & Co., upon the acceptance by that firm, on the 23d of April, 1861, of the draft of $8,050.06. The other claims for which the action was brought were properly excluded by the General Term. If not dissolved by the war of the rebellion, there can be no serious question of the existence of the firm at that time, and of the liability of the defendant as a member of it. The consent of the senior, Brander, to become a party to the articles of association as a partner in commendam was not necessary to the liability of the other members to third persons dealing with them, while carrying on the business in the name of the firm. The defendant, Matthews, was in New Orleans at the time the draft was accepted, engaged in superintending and managing the business in the name of the firm, and would not be permitted to urge against his own acts the non-existence of the firm by reason of a want of consent on the part of one of its intended members, although such consent was by the articles necessary to the existence of the firm.

The important point involved in the case is, whether the partnership had at that time been dissolved by the existence of the war of the rebellion.

This involves the question whether war existed at that time in the State of Louisiana against the Government of the United States so as to render unlawful all commercial intercourse between the citizens of that State and the citizens of other portions of the country.

The court below placed the decision against the defendant upon its authority of the dissenting opinion of Nelson, J., in the *Prize Cases*, 2 *Black*, 635, which maintained in substance that under our Constitution and theory of government, the insurrection could not be treated as a war with its legal consequences until Congress, the war-making power, had declared or recognized its existence, and this was not done until the passage of the act of Congress on the 13th of July, 1861; the majority of the court held that war did exist as early as the first capture, which was May 17, 1861, that the firing upon Sumpter, the ordinance of secession of various States, and hostile preparations on the part of the insurgents, together with the action of the President, representing the Government, in measures to meet these

warlike demonstrations, evinced by his Proclamation of April 15, calling out the militia, and the Proclamations of blockade of April 19 and 27, were conclusive evidence that the war existed and that the rights and *status* of the citizens were affected by such war, and that the capture of a vessel owned by citizens of one of the insurgent States was lawful upon the ground that such owners were public enemies. Without assuming to determine between the soundness of the views contained in the respective opinions, it appears to me proper that upon a question of this character, our decision should, if possible, harmonize with those of the federal courts, and we must therefore regard the authoritative decision of the court, rather than the dissenting opinion, even though, as an original question, we should concur with the latter.

I cannot, therefore, adopt the grounds upon which the Genenral Term placed its decision. In the late case of the *Protector*, 12 *Wall.*, 700, the same court, in determining what space of time must be excepted from the statute of limitations, in bringing an appeal, by the war of the rebellion, held that such suspension commenced on the 19th day of April, 1861, the date of the first Proclamation of intended blockade. Whilst these and other kindred cases do hold that war existed as early as the 23d day of April, 1861, and that certain legal consequences resulted therefrom, they do not cover the precise question involved in this case, and that is, whether at that date all commercial intercourse was unlawful by reason of the existence of the war.

It is conceded that, according to the law of nations and the commen law, one of the consequences of war is the interdiction of all commercial intercourse between the subjects of the two countries, including the dissolution of all partnerships. (1 *Kent's Com.*, 66; *Griswold* v. *Waddington*, 16 *J. R.*, 438; *The William Bagaley*, 5 *Wall.*, 377.)

The reason of this rule is too obvious to require comment. A state of war puts all the members of the two nations in hostility to each other, and pacific trading and intercourse are inconsistent with that condition; but a more important reason is, that "it would counteract the operations of war and throw obstacles in the way of public efforts and tend to disorder, imbecility, and treason." (1 *Kent's Com.*, 74.) It is equally well settled that this rule may be modified by the sovereign power. Trading may be permitted by any government engaged in war. Every country settles its own policy in this respect, and determines for itself whether it is most for its interest to allow commercial intercourse or not. (*U. S.* v. *Lane*, 8 *Wall.*, 195.) The right of each

State to permit unrestricted commercial intercourse or partial licensed trading in specific cases is apparent upon general principles and recognized in all the authorities. (1 *Kent's Com.*, 74.) It is pertinent, therefore, to inquire whether such intercourse was permitted by the Government, and, if so, up to what period. *The Prize Cases* (*supra*) recognize the acts of the President prior to the assembling of Congress as the acts of the Government, having equal effect upon this question as if authorized by Congress.

The first Proclamation bears date April 15, 1861, prior to which time several of the States had passed ordinances of secession, several of the forts and some public property had been seized, and Fort Sumter had been attacked. This Proclamation, after reciting that the execution of the laws of the United States were obstructed by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, made a call for militia to the number of seventy-five thousand men, and contains this clause: "I deem it proper to say that the first service assigned to the forces hereby called forth will probably be to repossess the forts, places, and property which have been seized from the Union, and in every event the utmost care will be observed, consistently with the objects aforesaid, to avoid any devastation, *any destruction of or interference with property, or any disturbance with peaceful citizens in any part of the country.*"

The terms of this Proclamation repel the idea of prohibiting or restricting free business intercourse between citizens of different sections of the country. On the contrary, it pledges protection to property and the lawful pursuits of peaceful citizens. It seeks only to repossess the property which had been seized, and put down the unlawful combination to resist the laws.

The next is a Proclamation of intended blockade, bearing date April 19, 1861. The President, in this Proclamation, after reciting that an insurrection had broken out in several States, and that a combination of persons threatened to grant pretended letters of marque and reprisal, proceeds to say that, "with a view to the same purpose before mentioned, and to the protection of the public peace and the lives and property of quiet and orderly citizens, pursuing their lawful avocations, until Congress shall have assembled and deliberated on the said unlawful proceedings, or until the same shall have ceased," he deems it advisable to set on foot a blockade of the ports of the States in which the insurrection existed.

Upon the authority of the *Prize Cases*, this was an act of war on the part of the Government, and justifiable as a war measure, based upon the existence of a state of war.

But, so far as it operated as a restriction upon trade, it was confined to the commerce of the ports, and ostensibly in preventing the fitting out of vessels to cruise under pretended letters of marque and reprisal, and it expressly assumed to protect the lives and property of quiet and orderly citizens pursuing their lawful avocations "*until Congress shall have assembled and deliberated.*'

Nothing is plainer to my mind than the intention of this Proclamation to avoid any interference with the business relations of the citizens of the country, except so far as the blockade would have that effect, until the meeting of Congress.

It seems incongruous to hold that a Proclamation which expressly declares protection to citizens in their lawful avocations should have the legal effect of invalidating all business transactions.

The next material act of the Government bearing upon this question was the act of Congress of July 13, 1861, the fifth section of which delares that in a certain specified contingency "it may and shall be lawful for the President, by Proclamation, to declare that the inhabitants of such States, or any section or part thereof, where such insurrection exists, are in a state of insurrection against the United States, *and thereupon*, all commercial intercourse between the same and the citizens of the rest of the United States shall cease and be unlawful, so long as such hostility shall continue."

This was the first intimation on the part of the Government of an intention to prohibit commercial intercourse, while, as we have seen, every previous expression repelled such intention. The fair construction of this act is to regard it both as an admission of the lawfulness of commercial intercourse up to that time, and a permission to continue it until the President should issue the Proclamation.

It is urged that this act provided merely for a warning or notification to the people that war existed, so that they might know and protect their rights, but this view is inconsistent with the terms of the act. It authorizes an act to be done, the effect of which, if done, is declared to be to prohibit commercial intercourse from the time the act is done.

It does not purport to prohibit such intercourse, nor to declare a state of war, the legal consequences of which would be to prohibit it, but in substance it authorizes the President to prohibit it.

The language of the act is utterly inconsistent with the

claim that such intercourse was then, or had been unlawful. In pursuance of this act, the President, on the 16th day of August, 1861, issued his Proclamation, declaring certain States in a state of insurrection, and that commercial intercourse with the citizens of other States was unlawful. From that period such intercourse became unlawful, and up to that period, by the implied and express permission of the Government it was lawful. If the war had ceased on the 15th day of August, 1861, and the Proclamation of the 16th had never been issued, can there be a doubt that the ordinary business relations of the citizens of the respective sections of the Union would have been unaffected.

It may well be that the citizens of the insurrectionary States should be regarded as public enemies for the purpose of enforcing the blockade, and that where the courts were interfered with so as practically to prevent an appeal, the running of the statute of limitation should be suspended, and that these should be regarded as consequences of an *existing state* of war, but they are not necessarily inconsistent with the continuance of ordinary business relations, and certainly not with the right of the Government to prevent such continuance. The language used by the Government is capable of no other construction than an intention to permit business intercourse; such must have been the general understanding of the people, and good faith demands that it be maintained. (*Woods* v. *Wiler*, 43 *N. Y.*, 165.) The long and sanguinary contest which followed may reflect light upon the nature and magnitude of the preparations which were then made or contemplated to resist the Government, but cannot change the legal rights of citizens as they existed, by the acts of the Government at that time.

That the intention of the Government was in accordance with the views above expressed, is confirmed by a recurrence to the circumstances attending the breaking out of the rebellion, and these circumstances will also serve to illustrate a distinction which, I think, exists between an insurrection and a war with a foreign nation, as it respects the question under consideration.

There was a great doubt, both in official circles and among the people, whether the insurrection would ever reach the magnitude of a war, and it was predicted by prominent officers of the Government, looking probably at efforts of conciliation as well as effective force to terminate it, that it would terminate within a specified number of days.

Impressed with this belief, or with doubts whether it

might not be true, and hoping that it might, and considering the extensive intimate business relations existing between the citizens of the insurrectionary States and the citizens of other portions of the country, and the great injury which would be inflicted upon both classes by a sudden and unexpected interruption of those relations, the Government was highly commendable in endeavoring to prevent such interruption until the safety and integrity of the country seemed to demand it. Whilst vigorously resisting the aggressions of the insurgents by the use of ordinary war measures, it wisely postponed to the latest practicable day one of the most serious consequences of a state of war, the unqualified interruption of commercial intercourse. The same legal consequences result from a civil as a foreign war.

In either the Government has the right to modify and restrict these consequesces, but as it respects business relations between citizens of the same country existing upon the breaking out of an insurrection, there is much stronger reason on the part of the sovereign powers to preserve them than in case of a foreign war, because, if the insurrection is suppressed, the Government has an equal interest in the prosperity of the insurgents as in the legal portion of its citizens, and an interruption of those relations are equally injurious to both.

In cases of insurrection the Government possesses both belligerent and sovereign rights, and can exercise both or either, partially or wholly. (100 Mass., 56.) In the late civil war the Government hesitated to accept a state of war, and when it did it preserved as long as possible the business interests of the people.

This is manifest from the various Proclamations of the President, and especially from the act of Congress of the 13th of July, 1861. It follows that when the draft was accepted, commercial intercourse was lawful by the permission of the Government, and that the defendant is liable thereon.

It may be questioned whether the defendant should not, as to this draft, be regarded as a citizen of New Orleans. Although his legal residence was in New York, yet he had entered into this copartnership some time previously, and at that time was personally superintending the business. That was his business residence, and, for aught that appears, he then intended to remain. But it is unnecessary to decide this point.

Judgment affirmed.

50 New York, 168.